

# RICHARD PERTZ ATTORNEY AT LAW

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ADMITTED IN NEW YORK AND NEW JERSEY

December 3, 2014

Henry Guzman, Esq.  
Assistant Regional Counsel  
US Environmental Protection Agency-Region II  
Office of Regional Counsel  
New York/Caribbean Superfund Branch  
290 Broadway-17th Floor  
New York, NY 10007-1866

re: Charlestown Mall Site, Utica/Frankfort NY

Dear Mr. Guzman,

I forward herewith the responses of Gaetano Associates, LP to EPA's enquiries regarding the above named site. In addition to Gaetano Associates, LP's narrative responses we also enclose a variety of documents relevant thereto.

While we have endeavored to provide complete responses, there remain certain documents and information still being searched out, and we will continue to supplement these responses as those items become available. This most particularly, though not necessarily exclusively, relates to insurance policies and dec sheets. The enclosures provided are, however, substantial and will provide you with the greatest part of information responsive to your request.

Gaetano Associates, LP was a real estate investment company that owned the site for some years, selling to it Consolidated American Industries Corporation by contract dated September 23, 2005. This was an arm's length transaction, and neither Gaetano Associates, LP nor any affiliated persons or entities had any other relationship at any time with Consolidated American Industries Corporation, other than regarding the continued tenancy of Gaetano Construction Corporation after the conveyance. Gaetano Associates, LP did not control or perform any maintenance, construction or demolition activities at the site after that date. During the time Gaetano Associates, LP owned the property it operated as a landlord, first to retail establishments and then to business tenants. Gaetano Associates, LP never performed any operations at the site that caused any hazardous substances to be brought on the site, never generated any hazardous substances, and never performed any demolition or other activities that caused or threatened the release of hazardous substances. In practical terms, it was simply a landlord.

Consolidated American Industries Corporation was fully advised of the environmental clean-up undertaken by Gaetano Associates, LP, at tremendous expense, at the behest of NY DEC in the mid 1980's. Gaetano Associates, LP was led to understand at that time that the remediation ordered

12280 RT. 365, REMSEN, NY 13438 (MAILING)— 29 W. 65<sup>TH</sup> ST. #5H, NEW YORK, NY 10023 (APP'T ONLY)  
16 APPLEWOOD DR. HOPEWELL, NJ 08525 (APP'T ONLY)  
CORRESPONDENCE AND SERVICE OF PAPERS BY E-MAIL REQUESTED

and agreed upon by DEC addressed all the issues of concern to environmental regulators at the site.

Gaetano Associates, LP fully disclosed all known environmental conditions to Consolidated American Industries Corporation prior to the conveyance. Consolidated American Industries Corporation was fully advised of the asbestos survey performed by Jack Eisenbach Engineers in 1998, and was provided a copy of the findings.

Gaetano Associates, LP does not have direct knowledge of the course of events at the site after the conveyance to Consolidated American Industries Corporation. However, it is our understanding that at some time after the September 2005 conveyance the site passed into the hands of a third party, which may have been an entity that had financed the purchase by Consolidated American Industries Corporation. During the period of the third party's ownership and control, EPA investigated and determined that removal of asbestos was required. We understand that one or more contractors were engaged, apparently under the supervision and control of EPA. At no time during the process was Gaetano Associates, LP advised of the proceedings, no demands were made upon it, and no opportunity was given it to perform removal in a sufficient but economically manageable way.

At no time had Gaetano Associates, LP been advised or had any knowledge that there was a release or threatened release of asbestos. There had never been any complaints on the part of any regulator or individual concerning a release or threatened release of asbestos. During its control of the premises Gaetano Associates, LP controlled access to the site, prevented access to any locations that had been subject to deterioration, and prevented any possible exposure to asbestos.

Please advise of any further information or explanation you require from Gaetano Associates, LP.

Yours,



Richard Pertz, Esq.

cc: Richard Greene, Esq. w/o enclosures

December 3, 2014

United States Environmental Protection Agency  
Charlestown Mall Site, Frankfort, Herkimer County, New York  
Request for Information; October 31 2014

1. Gaetano Associates, LLC  
c/o Richard Pertz, Esq.  
12280 Rte 365, Remsen, NY 13438
2. Current association with site: None  
Gaetano Associates was sold to Consolidated American Industries Corporation on September 23, 2005. See Exhibit 1, Agreement And Plan of Acquisition of Gaetano Associates, LLC, A New York Limited Liability Company and Consolidated American Industries Corporation (Consolidated)

Past Association with site:

We attach Exhibit #2 which is on chronological list of events starting with the formation of Gaetano Associates, Limited Partnership on April 1, 1979. Charles A. Gaetano and Brian A. Gaetano were designated as General Partners. The ultimate purpose of the partnership was to own, develop and operate "Charlestown", an original factory outlet center mall to be located in Utica, NY. "Charlestown" (Factory Outlets Center) opened for business in 1979 and by 1981, 39 true factory outlet stores were in operation at developed buildings located at the site. Please refer to Exhibit #3 for FloorLayout diagrams.

By May 1, 1991, the amount of area leased to factory outlets decreased to under 7,000 sq. ft. and only one remaining store, the Ole Mill. Attached for your review is Exhibit #3, which presents for the years 1990 through 2005 the locations of leased areas within the occupied buildings. As indicated on the enclosed floor plans included in Exhibit #3, Building #'s 3, 5, 7, 18 and most of Building 4 were never developed nor occupied for use by Gaetano Associates. As stated at the beginning of this response #2, the sale of Gaetano Associates to Consolidated American Industries took place on September 23, 2005.

3. a. No legal or business relationship between Gaetano Associates and Gaetano Property Management.
3. b. Unknow entity:
- 3.c. + e. Gaetano Construction, or formally listed as Charles A. Gaetano Construction Corp. leased office space from Gaetano Associates site from March 1985 to December 2007. Please see Charles A. Gaetano Construction Corp's detailed response for EPA's request for information Re: Charlestown Mall Site dated March 13, 2013 and also requested on October 31, 2014 for a complete discussion of the legal and business relationship between these two affiliated entities.

- 3. d. CG Properties – no legal or business relationship between the company (Gaetano Associates L.P. (LLC) and this entity. CG Properties owns no assets.
- 3. f. Gaetano Construction Services LLC – No legal or business relationship existed with this entity & Gaetano Associates.
- 3. g. Sperry UNIVAC – Former owner of the Charlestown Mall Site.  
Sperry UNIVAC acquired the Site from the Savage Arms Corporation in 1958. Sperry UNIVAC produced computers at this site until 1976 when all operations were moved to other Sperry UNIVAC locations.
- 3. h. Savage Arms Corporation – Starting in the early 1900's Savage Arms completed the construction of the entire 750,000 + sf complex of multi-storied (mainly 4) buildings. Savage Arms Corporation manufactured firearms such as the Thompson Submachine Gun; the Browning .50 Caliber Machine Gun, the Lewis Water-Cooled Machine Gun, and the Savage automatic pistol. Other products manufactured at the site included a washing machine, and ice cream cabinet and the first milk dispenser. By 1917 payroll exceeded 7,800 workers and grew to an operation of over 8,800 workers during WWII. In 1956 Savage Arms moved its operations to Chicopee, Massachusetts. No legal or business relationship ever existed between Savage Arms Corporation and Gaetano Associates.
- 3.i.,j.,k.,l. Unknown entities. No legal or business relationship ever existed between Gaetano Associates and any of these entities.
- 3. m. Consolidated American Industries Corp. – see response to Item 2 above. Also it should be stated that the transaction between this entity and Gaetano Associates as described in Item 2 was an arms-length transaction. No prior business or legal relationship existed prior to or after the sale of Gaetano Associates to Consolidated American Industries Corporation.
- 3.n. See Exhibit # 11 and our response to item 17.
- 4. Legal Name of Company: Gaetano Associates, LLC c/o Richard Pertz, Esq. 12280 RTE365, Remsen, NY 13438

Gaetano Associates has never had an ownership interest with any other company.

See Exhibit 2 for all documents supporting the formation of Gaetano Associates, LP ; subsequent amendments; conversion to a Limited Liability Company; and ending with the sale of Gaetano Associates to Consolidated American Industries Corporation.

- 5. No current officers. Entity ceased operations with sale to Consolidated on September 23, 2005.

6. See Exhibit 4 for last five years of Federal Tax Returns. Please note that the 2006 year return is marked FINAL. No audited financial statements were prepared for the last three years of operations.
6. a. Not applicable. Gaetano Associates never filed for bankruptcy.
7. See Exhibit 5 for copies of the last five years NYS Tax Returns. Please note that the return filed for the 2006 year is marked FINAL.
8. As indicated above, Gaetano Associates ceased operations in 2005 after the sale to Consolidated. We are still in the process of searching for the original insurance policies. If necessary we will contact the insurance carriers and request copies of all policies relating to the period of operation of April 1979 through 2005. We request that EPA allow us additional time to complete our search and subsequent review of applicable insurance policies that could provide possible coverage for the company against any liability under CERCLA.
9. As CERCLA was not enacted until 1980, ASTM standards did not exist. Accordingly, no such documents existed at the time of acquisition of the site by Gaetano Associates.
10. Gaetano Associates operated a retail factory outlet center and commercial business park at the Site. As indicated on Exhibit #3, the company only used a limited portion of the total area available at the site. During operations at the site, Gaetano Associates was never involved in any type of manufacturing, chemical processing etc. Gaetano Associates operations at the Site as described did not generate any hazardous substances.
10. a. As stated, Gaetano Associates did not generate, nor did they produce any hazardous substances at the Site. Therefore, no individual was ever assigned the responsibility as to how such substances would be stored, treated, or disposed of. Exhibit 6 is a copy of the NYS DEC Commissioner's Summary Abatement Order and Notice of Hearing dated and signed on January 7, 1985 by Henry G. Williams, Commissioner. Also attached to this order is Appendix B that identifies the Sperry Corporation as a person responsible for the disposal of hazardous waste at the site. These documents clearly identify that NYSDEC conducted a thorough inspection of all buildings located at the Site that resulted in Gaetano Associates performing an extremely expensive remediation and proper disposal of hazardous substances created and deposited by previous owners of the Site.

As indicated by Exhibit #7, the company developed a Remedial Action Plan and filed same with the Division of Environmental Enforcement with New York State Department of Environmental Conservation on January 14, 1985.

As indicated by Exhibit #8, the company executed an order of consent on January 2, 1987 agreeing to the payment of penalties totaling \$49,000 to NYS DEC in relation to the January 7, 1985 Summary Abatement Orders.

10. b. As indicated previously, Gaetano Associates did not engage in any type of manufacturing

processes, nor did they generate any hazardous wastes at the site. Therefore, there was no justifiable reason to institute a waste management plan at the Site. Gaetano Associates adhered to appropriate practices that prevented any potential exposure to any hazardous substances by maintaining continuous chain link fencing around all unoccupied areas at the Site.

11. a-g.

Gaetano Associates was never aware of any leaks, spills, or releases into the of any hazardous substances, pollutants, or contaminants at the Site. As stated in Item #10 above, Gaetano Associates fully cooperated with the terms of the NYS DEC Summary Abatement Order dated January 7, 1985. It should be apparent that Gaetano Associates was not involved in placing those substances at the site as they operated a factory outlet center and later a commercial office business complex which involved the leasing of office and storage space at the site. As indicated by our response to Item #10 above, Gaetano Associates did agree to remove certain hazardous substances as identified by NYS DEC Order of Consent Index #T090684 dated October 11, 1984 (see Exhibit 6), Appendix B. As stated in that Exhibit#6, **respondent Sperry Corporation was also named by NYS DEC as a person responsible for the disposal of hazardous wastes at the site within the meaning of ECL 27 – 1313 (3) (a).**

11. h. The Savage Arms Corporation owned the Site from 19030 up until 1956 See our response under 3.h.

12. As indicated in our response to Items #10 and #11, we have made previous references to the proper remediation and disposal of substances deemed hazardous by the NYS DEC at the Site. Gaetano Associates was also involved in the removal and proper disposal of PCB transformers and transformer oil from the site. As indicated by Exhibit #9, Gaetano Associates submitted an April 15, 1987 cover letter with attached Form TP-550, NYS Department of Taxation and Finance Return of Special Assessments on Generation, Treatment or Disposal of Hazardous Waste in New York State for the last quarter of the year 1986 and the first quarter of 1987.

Also, enclosed under Exhibit #9 is a June 8, 1987 letter to NYS DEC referencing NYS DEC Hazardous Waste program Fee Invoice Number 131192610000. As indicated Gaetano Associates paid the recalculated fees of \$1,000 for this invoice. Also enclosed is an August 4, 1987 a regulatory fee recalculation request determination form agreeing with our earlier submittal.

Also attached to Exhibit #9 are two separate letters from the Company to NYS DEC regarding hazardous waste removal from the site in 1988.

Also please note that we have attached a copy of the NYS DEC Generator Annual Report from the year ending December 31, 1989. As indicated this related to the disposal of PCB contaminated (less than 500 PPM) asphalt, crushed stone and surface oil. This material is related to the disposal of PCB capacitors and PCB oil (less than 500 PPM) referenced in the previous paragraph.

12. a. As stated previously, the 100% ownership interest of Gaetano Associates was sold to Consolidated American Industries Corporation on September 23, 2005. Prior to signing

this Agreement, the seller of the 100% ownership interest of Gaetano Associates LLC insisted on removing sections identified as (f). Environmental, Health and Safety (i) and (ii). You will note that the words "out" have been placed next to these sections by Charles A. Gaetano. This confirms that the seller made no guarantees that the site being sold to Consolidated was free of any or all environmental hazards.

12. b. The Company did not contract with Jack Eisenbach Engineering, P.C. to perform an asbestos survey of the site in 1998. The Charles A. Gaetano Construction Corp. requested this survey in behalf of Gaetano Associates, LLC.

The Company took no immediate action in response to the April 1998 Asbestos Survey prepared by Jack Eisenbach Engineering, P.C. because there was no release of any friable asbestos materials into the environment at that time.

However, the Company had in place practices that prevented unauthorized access to the collapsed buildings, such as the existence of continuous chain link fencing around the perimeter of those collapsed buildings. Furthermore, the areas leased by the Company for third parties at the site were not located in areas contiguous with the collapsed buildings.

13. a. The condition of the buildings at the time Gaetano Associates, L.P. acquired ownership in April 1979 can best be described as in fair condition, especially considering that the buildings were constructed in the early 1900's and were at least approximately seventy years of age. The Company developed approximately 1/3 or approximately 225,000 sq. ft. of the total area available at the site.

13. b. The circumstances that led to the advanced deterioration of certain unoccupied and undeveloped buildings at the site were exposure to the elements, lack of available financing to properly maintain the buildings, and a lack of demand for the use of these unoccupied buildings by third parties.

The Company was not aware of any release of asbestos containing materials (ACM) within the unoccupied collapsed buildings. As indicated previously, the Company prevented any unauthorized access to these areas. This was accomplished by the continuous maintenance of chain link fencing around the perimeter of the areas where the collapsed buildings were located. Furthermore, the areas leased by the Company to third parties were located at distances remote from the collapsed buildings.

13. c. Gaetano Associates conducted no demolition of any buildings at the site during the years they owned this site, a period from April 1, 1979 to September 23, 2005, nor was it involved in any demolition at any other time.

14. Gaetano associates owns no assets either separately or jointly. Gaetano Associates was sold to Consolidated American Industries Corporation on September 23, 2005 as stated in Exhibit #1. Also see copies of the tax returns filed for the 2006 calendar year, both federal and New York State included in Exhibits #4 & #5.

15. Richard Pertz, Esq. 12280 Rte 365, Remsen, NY 13438  
Eckardt C. Beck, Consultant, 360 Erie Blvd. East, Syracuse, NY 13202  
William C. Gaetano, Vice President, Charles A. Gaetano Construction Corp., 11123  
Cosby Manor Road, Utica, NY 13502  
John N. Kinney, Controller, Charles A. Gaetano Construction Corp., 501 Wood Lane,  
Herkimer, NY 13350  
Charles A. Gaetano 1113 Parkway East Utica NY 13501
16. Richard Pertz, Esq. 12280 Rte 365, Remsen, NY 13438  
Eckardt C. Beck, Consultant, 360 Erie Blvd. East, Syracuse, NY 13202  
William C. Gaetano, Vice President, Charles A. Gaetano Construction Corp., 11123  
Cosby Manor Road, Utica, NY 13502  
John N. Kinney, Controller, Charles A. Gaetano Construction Corp., 501 Wood Lane,  
Herkimer, NY 13350  
Charles A. Gaetano 1113 Parkway East Utica NY 13501
17. Please see Exhibit #11 which is additional information relevant to this Response.  
We have provided all information in our response to EPA. If other information not  
included in this response becomes available and it is deemed to be relevant to your  
request, we will forward such information to you.



**CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION**

**Charlestown Mall Site, Frankfort, Herkimer County, New York**

State of New York

County of Herkimer

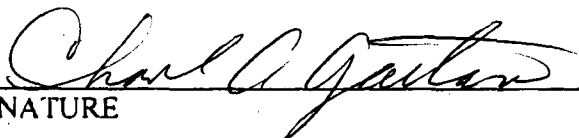
I certify under of law that I have personally examined and am familiar with the information and all documents submitted in response to EPA's Request for Information, and based on my inquiry of those individuals immediately responsible for obtaining the information I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that I am under a continuing obligation to supplement my response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or the company response thereto should become known or available to the company.

Charles A. Gaetano

NAME (print or type)

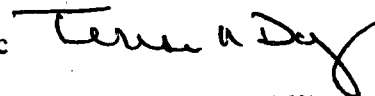
Member

TITLE (print or type)

  
SIGNATURE

Sworn to before me this 3rd day  
of December, 20104

Notary Public



TERESA M. DAY  
Notary Public

No. 01DA6055281

County of Oneida, State of New York  
My Commission Expires Feb. 20, 2015

# **Exhibit 1**

**AGREEMENT AND PLAN OF ACQUISITION**

**OF**

**GAETANO ASSOCIATES, LLC  
A NEW YORK LIMITED LIABILITY COMPANY**

**AND**

**CONSOLIDATED AMERICAN INDUSTRIES CORPORATION  
A NEVADA CORPORATION, as the acquiring corporation**

THIS AGREEMENT AND PLAN OF ACQUISITION (the "Agreement"), is entered into as of this 23rd day of September, 2005, by and between Gaetano Associates, LLC, a New York limited liability company (the "Target") and Charles A. Gaetano (collectively the "Sellers"), and Consolidated American Industries Corporation, a Nevada corporation (the "Buyer" and, together with the Sellers and the Target, the "Parties").

WHEREAS, the Boards of Directors of Buyer and Target have approved this Agreement and deem it advisable and in the best interests of each corporation and its respective shareholders to enter into this Agreement and consummate the transactions contemplated hereby and thereby; and

WHEREAS, the Sellers in the aggregate own all of the interest of Gaetano Associates, LLC, a New York limited liability company (the "Target"); and

WHEREAS, this Agreement contemplates a transaction in which the Buyer will purchase from the Sellers, and the Sellers will sell to the Buyer, all of the outstanding interest of the Target in return for the Buyer's Common Stock;

WHEREAS, for federal income tax purposes, it is intended that the Acquisition, as defined below shall qualify as a tax free reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code");

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representatives, warranties, and covenants herein contained, the Parties agree as follows.

**1. *Purchase and Sale of Target Shares.***

**1.01 *Basic Transaction.*** On and subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from each of the Sellers, and each of the Sellers agrees to sell to the Buyer, all of his or its interest for the consideration specified below.

**1.02 *Purchase Price.*** The Buyer agrees to pay to the Sellers at the Closing (the "*Purchase Price*") by delivery of (A) One Million (1,000,000) shares of Consolidated American Industries Corporation, a Nevada corporation, common capital stock (ticker symbol Pink Sheets "CDMJ") valued as of the date of closing, or on such other date as agreed upon by the parties (the "*Buyer Common Stock*") and (B) Five Hundred Thousand Dollars (\$500,000.00 US) cash payable to Charles H. Gaetano, sole owner of Gaetano Associates, LLC, by wire transfer or delivery of other immediately available funds.

**1.03 *The Closing.*** The closing of the transactions contemplated by this Agreement (the "*Closing*") shall take place at the offices of Gaetano Associates, LLC, 311 Turner Street, Utica, New York 13501, commencing at 9:00 a.m. local time on the second business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Buyer and the Sellers may mutually determine (the "*Closing Date*"); *provided, however*, that the Closing Date shall be no earlier than September 25, 2005.

1.04 *Deliveries at the Closing.* At the Closing, (A) the Sellers will deliver to the Buyer the various certificates, instruments, and documents referred to herein, (B) the Buyer will deliver to the Sellers the various certificates, instruments, and documents referred to herein, (C) each of the Sellers will deliver to the Buyer certificates representing all of his or its interest, endorsed in blank or accompanied by duly executed assignment documents, and (D) the Buyer will deliver to each of the Sellers the consideration specified above.

1.05 *Buyer Financing.* This Contract is conditioned on Buyer obtaining a written loan commitment within thirty (30) days after execution of this agreement. Buyer will make application immediately after execution of this agreement and use reasonable diligence to obtain a loan commitment and, thereafter, to satisfy terms and conditions of the commitment and close the loan. Buyer shall pay all loan expenses. If Buyer fails to obtain a commitment or fails to waive Buyer's rights under this subparagraph within the time for obtaining a commitment or, after diligent effort, fails to meet the terms and conditions of the commitment by the closing date, then either party thereafter, by written notice to the other, may cancel this Contract.

## 2. *Representations and Warranties Concerning the Transaction.*

2.01 *Representations and Warranties of the Sellers.* Each of the Sellers represents and warrants to the Buyer that the statements contained herein are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date.

2.01.1 *Organization of Certain Sellers.* If the Seller is a corporation, the Seller is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation.

2.01.2 *Authorization of Transaction.* The Seller has full power and authority (including, if the Seller is a corporation, full corporate power and authority) to execute and deliver this Agreement and to perform his or its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Seller, enforceable in accordance with its terms and conditions. The Seller need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

2.01.3 *Noncontravention.* To the best of our knowledge and upon information and belief neither the execution and the delivery of this Agreement, nor the consummation of the transaction contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Seller is subject or, if the Seller is a corporation, any provision of its charter or bylaws, or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Seller is a party or by which he or it is bound or to which any of his or its assets is subject.

2.01.4 *Brokers' Fees.* The Seller has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transaction contemplated by this Agreement for which the Buyer could become liable or obligated.

2.01.5 *Investment.* The Seller (A) understands that the Buyer Common Stock has not been, and will not be, registered under the Securities Act, or under any state securities laws, and is being offered and sold in reliance upon federal and state exemptions for transactions not involving any public offering, (B) is acquiring the Buyer Common Stock solely for his or its own account for investment purposes, and not with a view to the distribution thereof, (C) is a sophisticated investor with knowledge and experience in business and financial matters, (D) has received certain information concerning the Buyer and has had the opportunity to obtain additional information as desired in order to evaluate the merits and the risks inherent in holding the Buyer Common Stock, (E) is able to bear the economic risk and lack of liquidity inherent in holding the Buyer Common Stock, and (F) is an Accredited Investor.

2.01.6 *Target Interest.* The Seller holds of record and owns all of the stock in the corporation free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities laws), taxes, security interests, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. The

Seller is not a party to any option, warrant, purchase right, or other contract or commitment that could require the Seller to sell, transfer, or otherwise dispose of any interest of the Target (other than this Agreement).

**2.02 Representations and Warranties of the Buyer.** The Buyer represents and warrants to the Sellers that the statements contained herein are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date.

**2.02.1 Organization of the Buyer.** The Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada.

**2.02.2 Authorization of Transaction.** The Buyer has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Buyer, enforceable in accordance with its terms and conditions. The Buyer need not give any notice to, make any filing with, or obtain authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

**2.02.3 Noncontravention.** To the best of our knowledge and upon information and belief neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Buyer is subject or any provision of its charter of bylaws or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require, any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Buyer is a party or by which it is bound or to which any of its assets is subject.

**2.02.4 Brokers' Fees.** The Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transaction contemplated by this Agreement for which any Seller could become liable or obligated.

**2.02.5 Investment.** The Buyer is not acquiring the Target interest with a view toward resale in connection with any distribution thereof within the meaning of the Securities Act.

**2.03 Representatives and Warranties Concerning the Target and Its Subsidiaries.** The Sellers represent and warrant to the Buyer that the statements contained herein are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date, except as set forth in the disclosure schedule delivered by the Sellers to the Buyer on the date hereof and initialed by the Parties (the "Disclosure Schedule").

**2.03.1 Organization, Qualification, and Corporate Power.** The Target is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. The Target is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required. The Target has full corporate power and authority and all licenses, permits, and authorizations necessary to carry on the business in which it is engaged, and in which it presently proposes to engage, and to own and use the properties owned and used by it. The Sellers will deliver to the Buyer correct and complete copies of the charter, bylaws and/or operating agreement of the Target (as amended to date). The minute books, the stock certificate books, and the stock record books of the Target will be correct and complete.

**2.03.2 Noncontravention.** To the best of our knowledge and upon information and belief neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Target is subject or any provision of its charter of bylaws, or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require, any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Target is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Security Interest upon any of its assets). The Target does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any

government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

**2.03.3 Brokers' Fees.** None of the Target and its Subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

**2.03.4 Title to Assets.** The Target has good and marketable title to, or a valid leasehold interest in, the properties and assets used by them, located on their premises, or shown on the most recent balance sheet or acquired after the date thereof, free and clear of all Security Interests, except for properties and assets disposed of in the Ordinary Course of Business since the date of the Most Recent Balance Sheet, or properties securing mortgages as indicated in the Disclosure Schedule attached hereto.

**2.03.5 Subsidiaries.** The Seller warrants there are no subsidiaries of the Target.

**2.03.6 Financial Statements.** Attached hereto as Exhibit A are the following financial statements (collectively the "Financial Statements"): (A) balance sheets and statements of income as of and for the fiscal years ended 2002, 2003 and 2004 (the "Most Recent Fiscal Year End") for the Target, and (B) and balance sheets and statements of income, changes in stockholders' equity, and cash flow (the "Most Recent Financial Statements") as of and for the seven (7) months ended July 31, 2005 (the "Most Recent Fiscal Month End") for the Target. The Financial Statements (including the notes thereto) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, present fairly the financial condition of the Target as of such dates and the results of operations of the Target for such periods, are correct and complete, and are consistent with the books and records of the Target; provided, however, that the Most Recent Financial Statements are subject to normal year-end adjustments (which will not be material individually or in the aggregate) and lack footnotes and other presentation items.

**2.03.7 Events Subsequent to Most Recent Fiscal Year End.** Since the Most Recent Fiscal Year End, there has not been any adverse change in the business, financial condition, operations, results of operations, or future prospects of any of the Target.

**2.03.8 Undisclosed Liabilities.** The Target has no liability, and there is no basis for any present action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of them giving rise to any liability, except for (A) liabilities set forth on the face of the most recent balance sheet (rather than in any notes thereto) and (B) liabilities which have arisen after the Most Recent Fiscal Month End in the ordinary course of business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law).

**2.03.9 Legal Compliance.** The Target has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure to comply.

**2.03.10 Tax Matters.** The Target has filed all tax returns that it was required to file. All such tax returns were correct and complete in all respects. All taxes owed by the Target (whether or not shown on any tax return) have been paid. The Target currently is not the beneficiary of any extension of time within which to file any tax return. No claim has ever been made by an authority in a jurisdiction where the Target does not file tax returns that it is or may be subject to taxation by that jurisdiction. There are no security interests on any of the assets of the Target that arose in connection with any failure (or alleged failure) to pay any tax.

**2.03.10.1** The Target has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

**2.03.10.2** No Seller or director or officer (or employee responsible for Tax matters) of the Target expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax Liability of the Target either (A) claimed or raised by any authority in writing or (B) as to which any of the Sellers and the directors and officers (and employees responsible for Tax matters) of

the Target has knowledge based upon personal contact with any agent of such authority. The Disclosure Schedule lists all federal, state, local, and foreign income Tax Returns filed with respect to the Target, and indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Sellers have delivered to the Buyer correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by any of the Target and its Subsidiaries.

2.03.10.3 The Target has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

2.03.10.4 The Target has not filed a consent under Code Sec. 341 (f) concerning collapsible corporations.

2.03.11 *Real Property.*

2.03.11.1 The Disclosure Schedule lists and describes briefly all real property that any of the Target and its Subsidiaries owns. With respect to each such parcel of owned real property:

2.03.11.1.1 The identified owner has good and marketable title to the parcel of real property, free and clear of any Security Interest, except as indicated in the Disclosure Statement, easement, covenant, or other restriction, except for installments of special assessments not yet delinquent and recorded easements, covenants, and other restrictions which do not impair the current use, occupancy, or value, or the marketability of title, of the property subject thereto;

2.03.11.1.2 There are no pending or threatened condemnation proceedings, lawsuits, or administrative actions relating to the property;

2.03.11.1.3 The legal description for the parcel contained in the deed thereof describes such parcel fully and adequately, the buildings and improvements are located within the boundary lines of the described parcels of land, are not in violation of applicable setback requirements, zoning laws, and ordinances (and none of the properties or buildings or improvements thereon are subject to "permitted non-conforming use" or "permitted non-conforming structure" classifications), and do not encroach on any easement which may burden the land, and the land does not serve any adjoining property for any purpose inconsistent with the use of the land, and the property is not located within any flood plain or subject to any similar type restriction for which any permits or licenses necessary to the use thereof have not been obtained;

2.03.11.1.4 All facilities have received all approvals of governmental authorities (including licenses and permits) required in connection with the ownership or operation thereof and have been operated and maintained in accordance with applicable laws, rules, and regulations;

2.03.11.1.5 There are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party or parties the right of use of occupancy of any portion of the parcel of real property, except as indicated in the Disclosure Statement;

2.03.11.1.6 There are no outstanding options of rights of first refusal to purchase the parcel of real property; or any portion thereof or interest therein, except that all real property located west of Turner Street is not included in the sale;

2.03.11.1.7 There are no parties in possession of the parcel of real property, other than tenants under any leases disclosed in the Disclosure Schedule who are in possession of space to which they are entitled;

2.03.11.1.8 All operating facilities located on the parcel of real property are supplied with utilities and other services necessary for the operation of such facilities, including gas, electricity, water, telephone, sanitary sewer, and storm sewer, all of which services are adequate in accordance with all applicable laws, ordinances, rules, and regulations and are provided via public reads or via permanent, irrevocable, appurtenant easements benefiting the parcel of real property; and

2.03.11.1.9 Each parcel of real property abuts on and has direct vehicular access to a public road, or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the parcel of real property, and access to the property is provided by paved public right-of-way with adequate curb cuts available.

2.03.12 The Disclosure Schedule lists and describes briefly all real property leased or subleased by the Target. The Sellers have made available to the Buyer correct and complete copies of the leases and subleases.

2.04 *Tangible Assets.* The Target owns or leases all property, buildings, machinery, equipment, and other tangible assets necessary for the conduct of their business as presently conducted and as presently proposed to be conducted. Each such tangible asset is free from defects (patent and latent), has been maintained in accordance with normal industry practice, is in good condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used and presently is proposed to be used.

2.05 *Notes and Accounts Receivable.* All notes and accounts receivable of the Target are reflected properly on their books and records, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with their terms at their recorded amounts, subject only to the reserve for bad debts set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Target and its Subsidiaries.

2.06 *Powers of Attorney.* There are no outstanding powers of attorney executed on behalf of the Target.

2.07 *Insurance.* The Seller has made available to Buyer the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Target has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past two (2) years.

2.07.1 the name, address, and telephone number of the agent;

2.07.2 the name of the insurer, the name of the policyholder, and the name of each covered insured;

2.07.3 the policy number and the period of coverage;

2.07.4 the scope (including an indication of whether the coverage was on a claims made, occurrence, or other basis) and amount (including a description of how deductibles and ceilings are calculated and operate) of coverage; and

2.08 *Litigation.* The Seller warrants there is no litigation threatened or pending against the Target.

2.09 *Employees.* To the knowledge of any of the Sellers and the directors and officers (and employees with responsibility for employment matters) of the Target, no executive, key employee, or group of employees has any plans to terminate employment with the Target. The Target is not a party to or bound by any collective bargaining agreement, nor has any of them experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes.

2.10 *Employees Benefits.* The Seller warrants there are no employee benefit plans that the Target maintains or guarantees.

2.11 *Guaranties.* The Seller warrants that Target is not a guarantor or otherwise liable for any liability or obligation of any officer or employee of the corporation.

2.12 *Environment, Health, and Safety.*



2.12.1 There are no proceedings pending against the The Target for all environmental, health, and safety Laws, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced alleging any failure so to comply.

3. *Pre-Closing Covenants.* The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing.

3.01 *General.* Each of the Parties will use his or its best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the closing conditions set forth below).

3.02 *Notices and Consents.* The Sellers will cause the Target to give any notice to third parties, and will cause the Target to use its best efforts to obtain any third-party consents, that the Buyer may reasonably request in connection with the matters referred to above. If necessary, each of the Parties will give any notices to, make any filings with, and use its best efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to above. Without limiting the generality of the foregoing, each of the Parties will file any notification and report forms and related material that he or it may be required to file with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice under the Hart-Scott-Rodino Act, will use his or its best efforts to obtain an early termination of the applicable waiting period, and will make any further filings pursuant thereto that may be necessary, proper, or advisable in connection therewith.

3.03 *Operation of Business.* The Sellers will not cause or permit the Target to engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business. Without limiting the generality of the foregoing, the Sellers will not cause or permit the Target to declare, set aside, or pay any dividend or make any distribution with respect to its capital stock or redeem, purchase, take any action, or enter into any transaction of the sort described above.

3.04 *Preservation of Business.* The Sellers will cause the Target to keep its business and properties substantially intact, including its present operations, physical facilities, working conditions, and relationships with lessors, licensors, customers, and employees.

3.05 *Full Access.* Each of the Sellers will permit, and the Sellers will cause the Target to permit, representatives of the Buyer to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Target, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to the Target.

3.06 *Notice of Development.* The Sellers will give prompt written notice to the Buyer of any material adverse development causing a breach of any of the representations and warranties herein. Each Party will give prompt written notes to the others of any material adverse development causing a breach of any of his or its own representations and warranties herein.

3.07 *Exclusivity.* None of the Sellers will (A) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to the acquisition of any capital stock or other voting securities, or any substantial portion of the assets of the Target (including any acquisition structured as a merger, consolidation, or share exchange) or (B) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other matter any effort or attempt by any person to do or seek any of the foregoing. None of the Sellers will vote their Target Shares in favor of any such acquisition structured as a merger, consolidation, or share exchange. The Sellers will notify the Buyer immediately if any person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

4. *Post-Closing Covenants.* The Parties agree as follows with respect to the period following the Closing.

4.01 *General.* In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party may request, all at the sole cost and expense of the requesting Party. The Sellers acknowledge and agree that from and after the Closing the Buyer will be entitled to possession of all documents, books, records (including tax records), agreements, and financial data of any sort relating to the Target.

4.02 *Litigation Support.* In the event and for so long as any Party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (A) any transaction contemplated under this Agreement or (B) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Target, each of the other Parties will cooperate with him or it and his or its counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party.

4.03 *Transition.* None of the Sellers will take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier, or other business associate of the Target from maintaining the same business relationships with the Target after the Closing, as it maintained with the Target prior to the Closing.

4.04 *Confidentiality.* Each of the Sellers will treat and hold as such all of the confidential information, refrain from using any of the confidential information except in connection with this Agreement, and deliver promptly to the Buyer or destroy, at the request and option of the Buyer, all tangible embodiments (and all copies) of the confidential information which are in his or its possession. In the event that any of the Sellers is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any confidential information, that Seller will notify the Buyer promptly of the request or requirement so that the Buyer may seek an appropriate protective order or waive compliance with these provisions. If, in the absence of a protective order or the receipt of a waiver hereunder, any of the Sellers is, on the advice counsel, compelled to disclose any confidential information to any tribunal or else stand liable for contempt, that Seller may disclose the confidential information to the tribunal; *provided, however*, that the disclosing Seller shall use his or its best efforts to obtain, at the request of the Buyer, an order or other assurance that confidential treatment will be accorded to such portion confidential information required to be disclosed as the Buyer shall designate. The foregoing provisions shall not apply to any confidential information which is generally available to the public immediately prior to the time of disclosure.

4.05 *Buyer Common Stock.* Each Buyer common stock certificate will be imprinted with a legend substantially in the following form:

**THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN TRANSACTIONS EXEMPT FROM REGISTRATION UNDER THE ACT OR ANY APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT.**

Each holder desiring to transfer a certificate must furnish the Buyer with (A) a written opinion satisfactory to the Buyer in form and substance from counsel satisfactory to the Buyer by reason of experience to the effect that the holder may transfer the certificate as desired without registration under the Securities Act and (B) a written undertaking executed by the desired transferee satisfactory to the Buyer in form and substance agreeing to be bound by the recumbent provisions and the restrictions on transfer contained herein.

5. *Conditions to Obligation to Close.*

5.01 *Conditions to Obligation of the Buyer.* The obligation of the Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

5.01.1 the representations and warranties set forth above shall be true and correct in all material respects at and as of the Closing Date;

5.01.2 the Sellers shall have performed and complied with all of their covenants hereunder in all material respects through the Closing;

5.01.3 the Target shall have procured all of the third party consents necessary as specified herein;

5.01.4 there is no action, suit, or proceeding pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (C) affect adversely the right of the Buyer to own the Target Shares and to control the Target, or (D) affect adversely the right of the Target to own its assets and to operate its business (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

5.01.5 all applicable waiting periods (and any extensions thereof) under the Hart-Scott-Rodino Act, if any, shall have expired or otherwise been terminated and the Parties shall have received all other authorizations, consents, and approvals of governments and governmental agencies referred to in above;

5.01.6 all actions to be taken by the Sellers in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Buyer.

The Buyer may waive any condition specified in this section if it executes a writing so stating at or prior to the Closing.

5.02 *Conditions to Obligation of the Sellers.* The obligation of the Sellers to consummate the transactions to be performed by them in connection with the Closing is subject to satisfaction of the following conditions:

5.02.1 the representations and warranties set forth in above shall be true and correct in all material respects at and as of the Closing Date;

5.02.2 the Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;

5.02.3 no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

5.02.4 all actions to be taken by the Buyer in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be satisfactory in form and substance to the Sellers.

The Sellers may waive any condition specified in this section if they execute a writing so stating at or prior to the Closing.

## 6. *Remedies for Breaches of This Agreement.*

6.01 *Survival of Representations and Warranties.* All of the representations and warranties of the Sellers contained herein shall survive the Closing hereunder and continue in full force and effect for a period of three years

thereafter. All of the other representations and warranties of the Parties contained in this Agreement shall survive the Closing and continue in full force and effect forever thereafter (subject to any applicable statutes of limitations).

6.02 *Matters Involving Third Parties.* If any third party shall notify any Party (the "Indemnified Party") with respect to any matter ("A Third Party Claim") under which may give rise to a claim for indemnification against any other Party (the "Indemnified Party"), then the Indemnified Party shall promptly notify each Indemnified Party thereof in writing; *provided, however*, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnified Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced.

## 7 *Termination.*

7.01 *Termination of Agreement.* The Parties may terminate this Agreement as provided below:

7.01.1 the Buyer and Sellers may terminate this Agreement by mutual written consent at any time prior to the Closing;

7.01.2 the Buyer may terminate this Agreement by giving written notice to the Sellers on or before the 30<sup>th</sup> day following the date of this Agreement if the Buyer is not reasonably satisfied with the results of its continuing business, legal, and accounting due diligence regarding the Target;

7.01.3 the Buyer may terminate this Agreement by giving written notice to the Sellers at any time prior to the Closing (A) in the event any of the Sellers has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, the Buyer has notified the Requisite Sellers of the breach, and the breach has continued without cure for a period of 30 days after the notice of breach of (B) if the Closing shall not have occurred on or before October 30, 2005, by reason of the failure of any condition precedent herein (unless the failure results primarily from the Buyer itself breaching any representation, warranty, or covenant contained in this Agreement); and

## 8 *Miscellaneous.*

8.01 *Press Releases and Public Announcements.* No Party shall issue a press release or make any public announcement relating the subject matter of this Agreement prior to the Closing without the prior written approval of the Buyer and the Requisite Sellers; *provided, however*, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its best efforts to advise the other Parties prior to making the disclosure).

8.02 *No Third-Party Beneficiaries.* This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

8.03 *Entire Agreement.* This Agreement (including documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

8.04 *Succession and Assignment.* This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of his or its rights, interests, or obligations hereunder without the prior written approval of the Buyer and the Sellers; *provided, however*, that the Buyer may (A) assign any or all of its rights and interests hereunder to one of more of its affiliates and (B) designate one or more of its affiliates to perform its obligations hereunder (in any or all of which cases the Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder).

8.05 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

8.06 *Headings.* The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

8.07 *Notices.* All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

*If to the Sellers:* Charles A. Gaetano  
311 Turner Street  
Utica, New York 13501

*Copy to:*

*If to the Buyers:* James S. Renaldo  
COAM Companies  
8010 Woodland Center Boulevard  
Suite 500  
Tampa, Florida 33614

*Copy to:*

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communication hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

8.08 *Governing Law.* This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York.

8.09 *Amendments and Waivers.* No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Buyer and Sellers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

8.10 *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

8.11 *Expenses.* Each of the Parties, the Target, and its subsidiaries will bear his or its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transaction contemplated hereby.

8.12 *Construction.* The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

8.13 *Incorporation of Exhibits and Schedules.* The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

8.14 *Specific Performance.* Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their

specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth herein), in addition to any other remedy to which they may be entitled, at law or in equity.

8.15 *Submission to Jurisdiction.* Each of the Parties submits to the jurisdiction of any state or federal court sitting in Oneida County, New York, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process (A) to the Party to be served at the address and in manner provided for the giving of notices above or (B) to the Party to be served in care of the Process Agent at the address and in the manner provided for the giving of notices in above. Nothing herein, however, shall affect the right of any Party to serve legal process in any other manner permitted by law or at equity.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

Consolidated American Industries Corporation,

a Nevada corporation

By: 

James S. Renaldo, President

Gaetano Associates, LLC,

a New York limited liability company

By: 

Charles A. Gaetano, President

Charles A. Gaetano

By: 

THIS IS A LEGAL INSTRUMENT AND SHOULD BE EXECUTED UNDER SUPERVISION OF AN ATTORNEY.

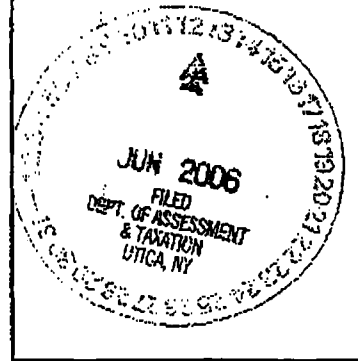
THIS INDENTURE, made on May 31<sup>st</sup>, 2006  
BETWEEN

GAETANO ASSOCIATES—LIMITED PARTNERSHIP,  
311 Turner Street, Utica, New York

CONSOLIDATED AMERICAN INDUSTRIES CORPORATION,  
8010 Woodland Center Boulevard - Suite 500,  
Tampa, Florida 33614,

grantor

grantee



WITNESSETH, that the grantor, in consideration of One and 00/100 ————— Dollar<sup>s</sup>,  
plus other good and valuable consideration  
paid by the grantee, hereby grants and releases unto the grantee, the heirs or successors and assigns of the grantee forever,

ALL SEE ANNEXED "SCHEDULE A" FOR PROPERTY DESCRIPTION

550.000  
105  
31

TOGETHER with the appurtenances and all the estate and rights of the grantor in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the grantee, the heirs or successors and assigns of the grantee forever. AND the grantor covenants as follows:

FIRST.—The grantee shall quietly enjoy the said premises;

SECOND.—The grantor will forever warrant the title to said premises;

This deed is subject to the trust provisions of Section 13 of the Lien Law. The words "grantor" and "grantee" shall be construed to read in the plural whenever the sense of this deed so requires.

IN WITNESS WHEREOF, the grantor has executed this deed the day and year first above written.

GAETANO ASSOCIATES—LIMITED PARTNERSHIP

In presence of:

by: Charles A. Gaetano L. S.  
Charles A. Gaetano

L. S.

"SCHEDULE A"

All that certain piece or parcel of land situate in the city of Utica, County of Oneida and State of New York and in the Town of Frankfort, County of Herkimer and State of New York, bounded and described as follows:

Beginning at a point of intersection of the south line of Dwyer Avenue with the southeasterly line of Turner Street Extension, said point of beginning being located S 45° 33' 40" E, two hundred thirty seven feet (237.00) from the intersection of the south line of Dwyer Avenue with the easterly line of Pixley Ave.

Thence N. 40 deg. 41 min. 20 sec. E. along said Turner Street line twenty seven and forty eight hundredths (27.48) feet to the point in the northeasterly line of land conveyed by Hart & Crouse Corporation to Savage Arms Corporation by deed dated Oct. 31, 1952 and recorded in the Oneida County Clerk's Office in Book of Deeds No. 1383 at page 516; thence S. 45 deg. 33 min. 40 sec. E. along said northeasterly line nine hundred sixty six and twenty six hundredths (966.26) feet to the easterly corner of the land so conveyed by Hart & Crouse Corporation to Savage Arms Corporation; thence S. 30 deg. 56 min. E. along the southeasterly line of lands so conveyed, five and fifty two hundredths feet (5.52') to a point in the northeasterly line of lands conveyed by New York Central Railroad Company to Savage Arms Corporation by deed dated June 14, 1941 and recorded in the Herkimer County Clerk's Office in Book of Deeds No. 342 at page 106; thence S. 45 deg. 33 min. 40 sec. E. along said northeasterly line of the last mentioned parcel, one thousand and thirteen and ninety one hundredths (1013.91) feet to a point in the northerly right of way line of the New York Central



(WestShore) Railroad; thence N. 65 deg. 17 min. W. along said northerly right of way line two thousand forty four and no hundredths (2044.0) feet to a point in the southeasterly line of a parcel of land appropriated by the State of New York from Savage Arms Corporation February 20, 1930 as recorded in the Oneida County Clerk's Office in Book of Deeds No. 907 at page 331; thence N. 24 deg. 43 min. E. along the southeasterly line of the land so appropriated, ten and twenty eight hundredths (10.28) feet; thence N. 49 deg. 18 min. 40 sec. W. along the northeasterly line of the land so appropriated, eight (8.0) feet; to a point in the easterly line of Turner Street Extension; running thence northerly along the east line of Turner Street Extension to the point and place of beginning.

Together with a right of way to the grantees their heirs successors and/or assigns over Turner Street Extension from Dwyer Avenue South to the North line of the former New York Central Railroad.

Being part of the same premises conveyed to the party of the first part, Sperry Rand Corporation, by Savage Arms Corporation, by instrument dated December 12, 1956 and recorded in the office of the Oneida County Clerk at Liber 1537 at Page 318 and in the office of the Herkimer County Clerk at Book 506 at Page 196.

Being a part of the premises conveyed to Gaetano Associates-Limited partnership by Warranty Deed recorded in the Oneida County on Jun. 15, 1979 in Book 2082, page 367 and recorded in Herkimer County on Jun. 15, 1967 in Book 665, page 374.

SUBJECT TO ANY AND ALL COVENANTS, CONDITIONS, EASEMENTS, RESTRICTIONS AND RIGHTS-OF-WAY OF RECORD.

# **Exhibit 2**

**FIRLEY, MORAN, FREER & EASSA, P.C.**  
**Certified Public Accountants**

5010 Campuswood Drive, Suite 4  
East Syracuse, New York 13057

Telephone: (315) 472-7045  
Facsimile: (315) 472-7053  
[www.fmfecpa.com](http://www.fmfecpa.com)

November 30, 2010

Mr. Charles A. Gaetano  
1113 Parkway East  
Utica, New York 13501

Re: Gaetano Associates, LLC

Dear Chuck:


I reviewed our files and was able to come up with a chronological list of events beginning with the formation of Gaetano Associates - Limited Partnership on April 1, 1979 and culminating with sale of your entire ownership interest in Gaetano Associates, LLC on September 23, 2005.

Where we had copies of documents, I have included them and referenced them as exhibits.

I have enclosed two complete sets of this history.

Please let me know if I can be of further assistance.

Very truly yours,

  
Peter A. Freer, CPA

PAF:ks  
Enclosures

An Independently Owned Member, McGladrey Alliance

The McGladrey Alliance is a premier affiliation of independent accounting and consulting firms. The McGladrey Alliance member firms maintain their name, autonomy and independence and are responsible for their own client fee arrangements, delivery of services and maintenance of client relationships. The McGladrey Alliance is a business of RSM McGladrey, Inc., a leading professional services firm providing tax and consulting services. McGladrey is the brand under which RSM McGladrey, Inc. and McGladrey & Pullen, LLP serve clients' business needs. McGladrey, the McGladrey logo and the McGladrey signature are used under license by RSM McGladrey, Inc. and McGladrey & Pullen, LLP.

# History of Gaetano Associates, LLC

Date		Exhibit
April 1, 1979	Formation of <u>Gaetano Associates--Limited Partnership</u> General Partners: Charles A. Gaetano and Brian A. Gaetano Limited Partners: Cornelia H. Gaetano, William C. Gaetano, Charles N. Gaetano, Mary J. Gaetano, Colleen A. Gaetano and Gregory Gaetano Ownership Interests: Charles A. & Cornelia H. Gaetano (1/3 <sup>rd</sup> each), Children (1/18 <sup>th</sup> ) each	A
July 9, 1991	Brian A. Gaetano withdraws as a general partner and transfers his ownership interest to Charles A. Gaetano--Charles A. Gaetano becomes sole general partner (7/18 <sup>th</sup> ownership interest after the transfer)	
July 23, 1991	Certificate of Adoption of Revised Limited Partnership Act under Section 121-1202 of the Revised Limited Partnership Act	
September 11, 1991	Certificate of Amendment filed with NYS Secretary of State to reflect the withdrawal of Brian A. Gaetano as a general partner on July 9, 1991	
December 31, 1991	Remaining children withdraw and their ownership interest transferred to their mother, Cornelia H. Gaetano (11/18 <sup>th</sup> ownership interest after the transfers)	
January 20, 1992	Certificate of Amendment filed with NYS Secretary of State to reflect the withdrawal of William C. Gaetano, Charles N. Gaetano, Mary J. Gaetano, Colleen A. Gaetano and Gregory Gaetano as limited partners on December 31, 1991.	B
March 2, 1992	Certificate of Amendment filed with NYS Secretary of State to reflect the withdrawal of limited partners as of December 31, 1991	C
March 30, 1995	Converted the L.P. to an LLC. Ownership continues as Charles A. Gaetano (7/18 or 38.8889%) and Cornelia H. Gaetano 11/18 or 61.1111%)	D
April 6, 1995	Certificate of Cancellation of Limited Partnership of <u>Gaetano Associates--Limited Partnership</u>	E
April 13, 1995	NYS Department of State Filing Receipt for Certificate of Conversion	F
April 13, 1995	NYS Department of State Filing Receipt for Cancellation of DOM, L.P.	G
September 23, 2005	Sale of complete ownership interest in LLC to Consolidated America Industries Corporation.	H

*Carry forward*

*Client*  
*Apr 21/84*  
*8/21/85*

GAETANO ASSOCIATES - LIMITED PARTNERSHIP

LIMITED PARTNERSHIP AGREEMENT

Section 1.01 - Parties to This Agreement: This instrument sets forth a Limited Partnership Agreement, dated as of April 1, 1979, by and between:

<u>Name and Address</u>	<u>Status</u>	<u>Ratio of Capital and Profit and Loss</u>	<u>Capital Contribution</u>
A. Charles A. Gaetano	General Partner	1/3	\$ 36,000
B. Mrs. Cornelia Gaetano	Limited Partner	1/3	36,000
C. William C. Gaetano	Limited Partner	1/18	6,000
<input checked="" type="checkbox"/> D. Brian A. Gaetano	General Partner	1/18	6,000
E. Charles N. Gaetano	Limited Partner	1/18	6,000
F. Mary J. Gaetano	Limited Partner	1/18	6,000
G. Colleen A. Gaetano, by Cornelia Gaetano, Custodian	Limited Partner	1/18	6,000
H. Gregory Gaetano, by Cornelia Gaetano, Custodian	Limited Partner	1/18	6,000
TOTAL CAPITAL			<u>\$108,000</u>

In consideration of the covenants and restrictions contained here, the Partners agree as follows:

Section 1.02 - Formation of Limited Partnership:

The General Partners and the Limited Partners, collectively called "Partners", hereby form a Limited Partnership pursuant to Article 8 of the Partnership Law of New York State.

Section 2.01 - Firm Name: The firm name of the Limited Partnership shall be "GAETANO ASSOCIATES - LIMITED PARTNERSHIP."

Section 3.01 - Purpose: The primary purpose of the Partnership is to acquire, finance, reconstruct, develop, and lease the "Property" providing leases of space and other services where appropriate for commercial and industrial uses. It is contemplated that, in order to provide space of leasable dimensions, the buildings on the Property may have to be divided by construction of interior walls and fixtures, and proper exits, loading docks and access drives. A legal description of the property and map of it are attached as Exhibits "A" and "B".

Section 3.02 - Principal Office: The principal office of the Partnership shall be at Utica, New York, or at such other place or places as the General Partner may determine.

Section 3.03 - Term: The term of the Partnership shall commence on the date of accomplishment of the recording of the Certificate in the office of the County Clerk of Oneida County and first publication of notice, and shall continue until the first to occur of the following events:

- A. The end of the year 2009;
- B. The death, insanity, insolvency, resignation, or removal of the last surviving individual General Partner;

unless the Partnership is sooner terminated in accordance with the dissolution provisions of this Agreement or otherwise by law.

Section 4.01 - Capital Contributions. Mr. Charles A. Gaetano is contributing his interest in "Charlestown", comprising the Property and other assets, subject to various liabilities, including liabilities to Mr. Gaetano of \$17,420, as set forth on the attached pro forma balance sheet, Exhibit "C", as at March 31, 1979, which interest is valued at \$36,000. Mrs. Cornelia Gaetano is contributing \$36,000 as her share of the capital. The other six Partners are contributing the sum of \$6000 each for their share of the capital.

Section 5.01 - Allocation of Profits and Losses: The terms "net profits" and "net losses" as used in this Agreement shall be defined to mean net profits and net losses

for federal income tax purposes as determined by generally accepted accounting principles on a cash basis. At the close of each taxable year of the Partnership, the net profits or the net losses of the Partnership shall be allocated to the accounts of the Partners in the ratios set forth in 1.01.

Section 5.02 - Distribution of Cash Flow: Distribution of net cash flow from operations shall be made to the Partners at any time that there is sufficient cash in the Partnership which the General Partners determine is not needed in the operation and development of the Partnership. Said distributions shall be in the ratios in 1.01.

Section 5.03 - Limitations:

- A. If any such cash distribution shall cause the then capital accounts of the Limited Partners to be reduced below the stated capital as specified in the Certificate of Limited Partnership then of record, then before such distribution is made, the Certificate shall be amended to reflect said reduction down to a minimum total of \$10,000.
- B. No distribution of cash or property will be made if such distribution will in any way jeopardize the business of the Partnership. It is understood that the General Partners shall set aside sufficient moneys out of the operations of the Partnership to adequately finance the working capital requirements of the Partnership.
- C. In the event that the General Partners determine that the best interests of the Partnership require the creation and maintenance of reserve accounts for working capital, contingency reserves and other reasonable needs, the General Partners, in their fiduciary capacity, reserves the right to allocate to such accounts such sums from the cash of the Partnership as are reasonable and prudent under the circumstances. Cash or other property allocated to such reserve accounts need not be distributed to the Partners unless and to the extent that the General Partners determine that the reserves are no longer needed.

Section 5.04 - Income Tax Allocation:

- A. The profits and losses for income tax purposes shall be allocated to the Partners in proportion to their interests as shown in 1.01.
- B. The capital account of each Partner shall be credited for the cash contributed and profits allocated, and debited with cash distributed and loss allocated.

Section 6.01 - Limited Partners:

- A. No Limited Partner or assignee of a partnership interest shall have the right to withdraw or reduce his or her contribution to the capital of the Partnership.
- B. A Limited Partner shall not be bound by, or be personally liable for, the expenses, liabilities or obligations of the Partnership.
- C. A Limited Partner in such capacity shall take no part in or interfere in any manner with the conduct or control of the business of the Partnership and shall have no right or authority to act for or bind the Partnership. This shall not prevent a Limited Partner, in his capacity as employee or principal of another entity, from participating in the rendering of services to the Partnership by the other entity.

Section 7.01 - General Partners' Duties:

The General Partners' duties include:

- A. Acquisition of the Property and carrying out the purposes of the Partnership.
- B. Financing of the Partnership's operations.
- C. General management of the Property, including the sale or lease of all or parts of it to third parties or to other partnerships or entities in which he or the Limited Partners, or some of them, have an interest.
- D. Other acts necessary for the development, reconstruction, promotion, financing, and leasing of the Property.



Section 7.02 - General Partners' Powers: The General Partners, in their fiduciary capacity, shall be solely responsible for management of the Partnership business with all rights and powers conferred by law. In addition to any other rights and powers which a general partner may lawfully possess, the General Partners, in their fiduciary capacity, shall have the following rights and powers:

- A. To acquire, hold and dispose of any real property or interest therein, as well as personal or mixed property, including the purchase, lease, development, improvement, maintenance, exchange, trade or sale of such properties, at such price, rental or amount, for cash, securities or such other property, and upon such terms as they deem, in their discretion, to be in the best interests of the partnership.
- B. To borrow money and, if security is required therefor, to mortgage or subject to any other security device any portion of the property of the Partnership, to obtain replacements of any mortgage or other security device, and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any mortgage or other security device, all of the foregoing at such terms and in such amounts as they deem, in their discretion, to be in the best interests of the Partnership.
- C. To acquire and enter into any contract of insurance which the General Partners deem necessary and proper for the protection of the Partnership and themselves, for the conservation of its assets, or for any purpose convenient or beneficial to the Partnership.
- D. To employ from time to time persons, firms or corporations for the operation and management of the Partnership business, including but not limited to, supervisory and managing agents, building management agents, insurance brokers, real estate brokers and loan brokers, and bookkeepers and accountants, on such terms and for such compensation as the General Partners shall determine. The General Partners may deal with persons, firms, corporations, agents,

and other entities to which then are related or in which they have an interest, subject to the overriding necessity that all compensation to such parties must be reasonable in amount.

- E. To pay organizational expenses incurred in the creation of the Partnership and acquisition of the Property by it.
- F. To compromise, arbitrate, or otherwise adjust claims in favor or or against the Partnership and to commence or defend litigation with respect to the Partnership or any assets of the Partnership as the General Partners may deem advisable, all or any of the above matters being at the expense of the Partnership.
- G. To purchase and hold until maturity, term, whole life, or other forms of insurance on the life of General Partners, or other Partners, in order to provide adequate cash for estate tax needs and other estate expenses and in order to assist the Partnership to acquire the interests of deceased Partners if agreement providing for same is made.
- H. To execute, acknowledge and deliver any and all instruments to effectuate the foregoing, and accomplish the purpose of the Partnership, including execution of the note and mortgage attached as Exhibit "D".
- I. All powers and discretions granted to a General Partner are so granted only in his capacity as a fiduciary for the Partnership and the other partners; such powers and discretions are not personal to him in the sense of exercise of his own individual benefit without regard to the interests of the Partnership.
- J. The General Partners are authorized to make investments of reserved cash, or of other cash on a temporary basis, in such bank accounts, or certificates of deposit, or other securities as they deem advisable.

Section 7.03 - Successor General Partner.

- A. A person who is now a Partner shall become an additional General Partner with the written consent of Charles A. Gaetano as General Partner and the written consent of Limited Partners owning at least a one-third interest in the Partnership.
- B. Charles A. Gaetano may by an instrument filed with the Partnership designate, and revoke the designation of, a Limited Partner, or a succession of Limited Partners, to become successor General Partner. Upon death or incompetence or resignation of Charles A. Gaetano, such designated Partner shall become a General Partner upon the written consent of Limited Partners owning at least a one-third interest in the Partnership.
- C. If a Partner other than Charles A. Gaetano and Brian Gaetano becomes a General Partner, the Certificate of Partnership shall be amended, recorded, and published as required by law. An additional or successor General Partner shall have at least a 2% interest as General Partner; as to the balance of his interest he may remain a Limited Partner.

Section 8.01 - Restrictions on General Partners:

The General Partners shall have no authority to:

- A. Act in a capacity other than as fiduciary for the Partnership and other Partners.
- B. Individually use or possess Partnership property or assign the rights of the Partnership in specific Partnership property for other than a Partnership purpose.
- C. Admit a person as a Partner except as may be provided in this Agreement.
- D. Sell substantially all of the assets of the Partnership, at a single sale which takes place at one time or from time to time in multiple sales pursuant to a preconceived plan, without

the prior written consent of the Partners entitled to more than two-thirds (2/3) of the profits of the Partnership.

Section 8.02 - Unanimous Consent: All major decisions shall require the unanimous consent of the General Partners, if there be more than one.

Section 8.03 - Other Ventures: Any of the Partners, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property; and neither the Partnership nor the Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom.

Section 9.01 - Books, Records, Account and Reports: At all times during the existence of the Partnership the General Partners shall keep or cause to be kept books of account, in which shall be entered fully and accurately each transaction of the Partnership. Such books of account shall be open to the reasonable inspection and examination of the Partners or their duly authorized representatives.

The General Partners shall, at least annually, have financial statements and income tax returns prepared for the Partnership by an independent Certified Public Accountant. In the discretion of the General Partners, they may cause audited statements to be prepared from time to time. A report indicating the respective Limited Partner's share of net profits of losses and capital gains or losses, all as defined and reflected on said Partnership income tax return, together with the annual report, shall be distributed to the Partners within ninety (90) days after the close of the taxable year of the Partnership for which such return was prepared.

Section 9.02 - Bank Accounts; Fund Control: All cash receipts of the Partnership are to be deposited in the Partnership name in such bank account or accounts as shall be designated by the General Partners.

Section 10.01 - Limitations on Sale of Partnership Interest:

A. A sole General Partner shall not sell, assign, pledge or otherwise transfer or dispose of all or any part of his interest in the Partnership. No Partner may sell, give, assign, pledge or otherwise transfer or dispose of any part of his or her interest in the Partnership without prior written consent of the General Partners, and prior written consent of Limited Partners representing at least 51% ownership of the Partnership. A partner who obtains such consent is called a "Selling Partner".

B. (i) Should any Selling Partner (after having obtained the consents provided in A., above) desire to transfer his or her interest in the Partnership, the Partnership shall have the first option to purchase all or any part of the interest being transferred. Said option shall be for a period of thirty (30) days after receipt by all of the non-selling Partners (General and Limited) of written notice of the intention of the selling Partner to transfer his interest in the Partnership. In the event that the Partnership shall not exercise its option to acquire all or any part of the interest subject to sale, the remaining Partners (General and Limited) shall have the right for a fifteen (15) day period after the end of said thirty (30) day period in which to elect to purchase all or any portion of said interest subject to sale and not purchased by the Partnership. If the non-selling Partners (General and Limited) elect to purchase portions of said interest in excess of that available for sale to them, each non-selling Partner electing to purchase may purchase up to an amount thereof proportionate to his interest in said profits of all Partners electing to purchase a portion of such interest. Notwithstanding the fact that the Partnership and the non-selling Partners have the right to purchase portions of the interest of the selling Partner, the right to purchase shall apply only if the Partnership and/or the non-selling Partners agree to buy all of the interest subject to sale. The right of the Partnership and/or non-selling Partners to purchase the interest subject to sale shall be for the same consideration as disclosed in any bona fide written offer by a third party to the selling Partner; if the transfer is by way of gift, or for less than an adequate consideration, the purchase price shall be an amount equal to the selling Partner's capital account. The terms of sale shall be at option of the purchasers either: (a) the same terms as specified in the offer of the third party or (b) payment on a non-recourse basis in

forty (40) level quarterly installments including interest at 6%. At any time that the selling Partner is considering selling his Partnership interest to a third party, he must disclose in writing to the non-selling Partners the name of the prospective purchaser and all the details and terms of any such negotiation or prospective offer as soon as he learns of the same.

(ii) If the Partnership and/or non-selling Partners fail to exercise its (their) option within forty-five (45) days from the receipt of the notice of the selling Partner referred to above, the selling Partner may, within sixty (60) days, sell the interest to the same third person and upon the same terms and conditions as are described in said notice.

(iii) Any such sale or all or any portion of a Limited Partner's interest shall not work a dissolution of the Partnership.

(iv) No sale or other form of disposition under this Section 10.01 shall render the purchaser or transferee a substitute Partner without compliance with Section 11.01.

C. If a living Partner wishes to transfer all or part of his or her interest to a trust or trusts for the benefit of his family, dependents, or estate, the consents referred to in paragraph A above must be obtained and the General Partners and the counsel to the Partnership shall have the right to examine the trust and any other instrument used to effect such transfer. However, if the consents are obtained, there need be no offer to sell pursuant to subparagraph B above.

#### Section 11.01 - Transfer of Limited Partnership

##### Interest:

A. An assignee of the whole or any portion of a Partner's interest in the Partnership shall be entitled to receive distributions of cash or other property from the partnership applicable to the interest acquired by reason of such assignment; provided that a duly executed and acknowledged written instrument of assignment in a form satisfactory to the General Partner and counsel to the Partnership, the terms of which are not in contravention of any of the provisions of this Agreement, is filed with the Partnership.

B. No assignee or transferee of the whole or any portion of a Limited Partner's interest in the Partnership shall have the right to become a substituted Limited Partner in place of his assignor unless all of the following conditions are satisfied:

(i) The duly executed and acknowledged written instrument of assignment which has been filed with the Partnership sets forth the intention of the assignor that the assignee become a substituted Limited Partner in his place.

(ii) The assignor and assignee execute and acknowledge such other instruments as the General Partners and counsel to the Partnership may deem necessary or desirable to effect such admission, including the written acceptance and adoption by the assignee of the provisions of this Agreement and a special power of attorney whereby the General Partners may execute the Certificate of Limited Partnership, and any amendment thereto, on behalf of the substituted Limited Partner.

(iii) The written consent of the General Partners, and of Limited Partners representing at least 51% ownership of the Partnership, to such substitution shall be obtained, the granting or denial of which shall be within the sole and absolute discretion of the such Partners.

(iv) A transfer fee has been paid to the Partnership which is sufficient to cover all reasonable expenses connected with such assignment and substitution.

Section 11.02 -Death of Parties: On death of a Partner other than Charles A. Gaetano, if the consents provided in 10.01A have been obtained, his or her interest may be transferred to heirs or legatees who shall then upon executing a copy of this Agreement become Limited Partners. If the consents are not granted, or if a transferee does not execute a copy of this Agreement, the Partnership shall have the option to purchase the entire interest of the transferee at its then "fair value". For purposes of this, section 11.02, "fair value" shall mean an amount equal to

- A. The fair market value of all real property and securities owned by the Partnership,

Plus

- B. The book value of all other assets of the partnership,

Less

- C. The amount of all mortgages and liens on the property in "A", and not included in "B",

Times

- D. The fractional or % ownership interest of the decedent;
- E. If the parties do not agree to "fair value", the issue shall be submitted to binding arbitrations under the auspices of the American Arbitration Association.

The option to purchase a deceased Partner's interest may be exercised by a notice in writing to the executor or administrator of the estate within one year after death. The Partnership may elect to pay the purchase price on a non-recourse basis in forty level quarterly installments including interest at 6%. The estate shall be entitled to its share of cash distributions and profits and losses to the date of closing, which shall be 90 days after exercise of the option. Fair value shall be determined as of the date of exercise of the option. If the closing is delayed beyond 70 days, the estate shall receive interest at 6%. If the option is not exercised the heir or legatee shall become an assignee as in 11.01 A.

Section 12.01 - Termination and Liquidation of the Partnership: The Partnership shall be terminated and liquidated upon the happening of any of the events stated in Section 3.03 or on the written decision of the Partners entitled to more than sixty-seven percent (67%) of the profits of the Partnership.

Upon the dissolution of the Partnership, the net profits and losses shall continue to be divided among or borne by the Partners during the period of liquidation in accordance with the provisions of Section 1.01. The proceeds of liquidation shall be distributed as realized in the following order:



- A. To the creditors of the Partnership (other than secured creditors whose obligations will be assumed or otherwise transferred on the sale or distribution of partnership assets).
- B. To the Partners (in equal priority) in proportion to their capital accounts in the Partnership up to an amount equal to such accounts.
- C. The balance of cash and property, if any, to the General Partner and the Limited Partners in accordance with the ratios in 1.01.

Section 13.01 - Election with Regard to Basis of Substituted Partner: The General Partners shall cause the Partnership to make the election referred to in Section 754 of the Internal Revenue Code of 1954 or any similar provision so as to give the transferees or successors of a Partner's interest the benefit of any increased tax basis.

Section 14.01 - Amendment of Agreement: This Agreement may be amended at any time by those Partners (General and Limited) entitled to more than seventy-five percent (75%) of the profits and losses of the Partnership; however, no such amendment shall (a) decrease the interest of any Partner in cash, profits, losses, or capital of the Partnership, or (b) change the general purposes of the Partnership, or (c) require added capital contribution.

Section 15.01 - Compensation of General Partners: It is intended that the General Partners be reasonably compensated for services rendered to the Partnership and for the personal exposure and liabilities undertaken. To accomplish this:

- A. The General Partners shall be entitled to a management fee of 2.0% of Net Rents received by the partnership after December 31, 1981. "Net Rents" shall mean cash amount received from tenants exclusive of amounts paid under the leases for taxes, repairs, tenant improvements, common area charges, HVAC charges, insurance premiums and the like; "Net Rents" shall also exclude overage rents received in respect of sales by tenants over base amounts in the leases; the term "Net Rents" shall include, however, amounts received as cost-of-living escalations of the basic rent amounts.

- B. Each General Partner shall receive an amount equal to one quarter of 1% (0.25%) of the annual average principal balance of Partnership debts and obligations for which the General Partners are personally liable as General Partner, but only to the extent the debts or obligations are not secured by a lien against Partnership Property.
- C. The foregoing compensation schedule may be amended prospectively with the consent of the General Partners and Limited Partners owning 51% of the Partnership. However, the compensation shall not be adjusted to a rate which is unreasonably high in view of the services performed.
- D. The foregoing shall not limit the reasonable compensation of the General Partners in their capacity as officer, general partner, manager or employee of any other entities owned by the Partnership.
- E. While the General Partners are being compensated for personal liability which may be incurred, there shall be no requirement that they become personally liable for Partnership obligations. It is intended that, where possible, borrowings shall be without recourse and that adequate public liability insurance shall be maintained at all times.
- F. Charles A. Gaetano, as General Partner, may make additional agreements with Brian A. Gaetano as General Partner for Brian Gaetano's reasonable compensation for services rendered to the partnership.

Section 16.01 - Miscellaneous:

A. All notices under this Agreement shall be in writing and shall be given to the Partner entitled thereto by personal service or by certified or registered mail, return receipt requested, to the address set forth in this Agreement for such Partner or at such other address as it, he may specify in writing by notice delivered to the General Partners.

B. Section titles or captions contained in this Agreement are inserted only as a matter of convenience in this Agreement and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

C. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, and the word "person" shall include corporation, firm, partnership or other form of association.

D. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

E. This Agreement and all amendments hereto shall be governed by the laws of the State of New York.

F. Any disagreement as to the interpretation or implementation of this Agreement which cannot be resolved by the parties shall be submitted to binding arbitration under the auspices of the American Arbitration Association or similar organization then in being.

G. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, and successors and assigns of the respective Partners.

Section 17.01 - Execution: The parties are executing this Agreement below. Cornelia Gaetano is executing this Agreement as custodian for Colleen A. Gaetano and Gregory Gaetano under the Uniform Gift to Minor Act. When Colleen and Gregory attain age 21 they may gain all the rights of Limited Partners by execution of a copy of this Agreement and delivering it to the General Partners.

Dated as of April 1, 1979

  
Charles A. Gaetano

Mrs. Cornelia Gaetano  
Mrs. Cornelia Gaetano

William C. Gaetano  
William C. Gaetano

Brian A. Gaetano  
Brian A. Gaetano

Charles N. Gaetano  
Charles N. Gaetano

Mary J. Gaetano  
Mary J. Gaetano

Colleen A. Gaetano  
Colleen A. Gaetano,  
by Cornelia Gaetano,  
Custodian

Gregory Gaetano  
Gregory Gaetano,  
by Cornelia Gaetano,  
Custodian

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came CHARLES A. GAETANO, to me known  
 and known to me to be the same person described in and who  
 executed the within instrument, and he duly acknowledged to  
 me that he executed the same.

Deborah W. Boyce  
 Notary Public  
 DEBORAH W. Boyce

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN OTSEGO COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came MRS. CORNELIA GAETANO, to me known  
 and known to me to be the same person described in and who  
 executed the within instrument, and she duly acknowledged to  
 me that she executed the same.

Deborah W. Boyce  
 Notary Public  
 DEBORAH W. Boyce

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN OTSEGO COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came WILLIAM C. GAETANO, to me known  
 and known to me to be the same person described in and who  
 executed the within instrument, and he duly acknowledged to  
 me that he executed the same.

Deborah W. Boyce  
 Notary Public  
 DEBORAH W. Boyce  
 NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN OTSEGO COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came BRIAN A. GAETANO, to me known and  
 known to me to be the same person described in and who exe-  
 cuted the within instrument, and he duly acknowledged to me  
 that he executed the same.

Deborah W. Boyce  
 Notary Public

DEBORAH W. Boyce  
 NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN OTSEGO COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came CHARLES N. GAETANO, to me known  
 and known to me to be the same person described in and who  
 executed the within instrument, and he duly acknowledged to  
 me that he executed the same.

Deborah W. Boyce  
 Notary Public

DEBORAH W. Boyce  
 NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN OTSEGO COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came MARY J. GAETANO, to me known and  
 known to me to be the same person described in and who exe-  
 cuted the within instrument, and she duly acknowledged to me  
 that she executed the same.

Deborah W. Boyce  
 Notary Public

DEBORAH W. Boyce  
 NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN OTSEGO COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came CORNELIA GAETANO, as Custodian for  
 COLLEEN A. GAETANO, to me known and known to me to be the  
 same person described in and who executed the within instru-  
 ment, and she duly acknowledged to me that she executed the  
 same.

Deborah W. Boyce  
 Notary Public

STATE OF NEW YORK     )  
                               )  
 COUNTY OF ONONDAGA    )     ss.:

DEBORAH W. Boyce  
 NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN Onondaga COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

On this 1<sup>st</sup> day of April, 1979,  
 before me personally came CORNELIA GAETANO, as Custodian for  
 GREGORY GAETANO, to me known and known to me to be the same  
 person described in and who executed the within instrument,  
 and she duly acknowledged to me that she executed the same.

Deborah W. Boyce  
 Notary Public

DEBORAH W. Boyce  
 NOTARY PUBLIC, STATE OF NEW YORK  
 QUALIFIED IN Onondaga COUNTY  
 COMMISSION EXPIRES MARCH 30, 1981

# HANCOCK & ESTABROOK

JOHN M. HASTINGS, JR.  
W. CARROLL COYNE  
DONALD P. MC CARTHY  
PAUL M. HANRAHAN  
EDWARD J. PFOHL  
JOHN R. VARNEY  
WILLIAM L. ALLEN, JR.  
CHARLES W. UMBRECHT, JR.  
DONALD J. KEMPLE  
CARL W. PETERSON, JR.  
CLARK A. PITCHER  
JAMES R. MC VETY  
ROBERT A. SMALL  
WALTER L. NEACHER, JR.  
DONALD A. DENTON  
DAVID W. LARRISON  
J. THOMAS BASSETT  
RICHARD W. COOK  
JOHN M. DE LANEY  
DAVID S. HOWE  
GREGORY R. THORNTON  
DOREEN A. SIMMONS  
MICHAEL E. O'CONNOR  
DAVID E. PEEBLES  
JAMES E. SPARKES  
JAMES J. CANFIELD  
GERALD F. STACK  
JAMES E. HUGHES  
JEFFREY S. ANDRUS  
JANET D. CALLAHAN  
THOMAS C. BUCKEL, JR.  
MICHAEL L. CORP  
DANIEL B. BERMAN  
JOHN T. MC CANN  
STEVEN R. SHAW  
DAVID T. GARVEY  
JOHN L. MURAD, JR.  
STEPHEN A. DONATO

COUNSELORS AT LAW

1500 MONY TOWER I

P.O. BOX 4876

SYRACUSE, NEW YORK 13221-4976

TELEPHONE (315) 471-3151

TELECOPIER (315) 471-3167

125 WOLF ROAD

ALBANY, NEW YORK 12205

TELEPHONE (518) 458-7660

TELECOPIER (518) 458-7731

9 PAYNE STREET

HAMILTON, NEW YORK 13346

TELEPHONE (315) 824-1038

TELECOPIER (315) 824-1044

January 16, 1992

RAYMOND A. MUST  
A. VAN W. HANCOCK  
CHARLES H. BASSETT  
COUNSEL

KENNETH F. HOLDEN  
MARK J. SCHULTE  
ALAN J. PIERCE  
NANCY FRIEL HORNIX  
MARTHA L. BERRY  
LAURA A. FUSCO  
MARION HANCOCK FISH  
BARBARA L. PRENDERGAST  
R. JOHN CLARK  
RENEE L. JAMES  
DAVID G. LINGER  
PATRICIA A. CROSBY  
DANIEL P. FLETCHER  
MICHAEL A. OROPALLO  
ELIZABETH A. SALVAGNO  
CAMILLE A. WOLNIK  
PATRICK M. CONNORS  
ANTHONY M. D'EREDITA  
TIMOTHY P. MURPHY  
KATHY R. LAWS  
CORR A. ALSANTE  
DEBRA A. CHINI  
ROBERT E. LIDDELL  
EDWARD J. SMITH, III  
SARAH GRACE CAMPBELL  
CAROL M. CURRIE

Brian A. Gaetano  
BRIAN A. GAETANO COMPANY, INC.  
258 Genesee Street  
Utica, New York 13502

Dear Brian:

~~Pursuant to your request, enclosed please find the documents necessary to effectuate the withdrawal of your brothers and sisters from Gaetano Associates Limited Partnership.~~

Once these have been executed, please return them to me and I will see that they are properly filed.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

HANCOCK & ESTABROOK

Gerald F. Stack

GFS/sjl  
Enclosures  
cc: Peter Freer

*Mike:  
In the file  
We should get  
copies of Brian's  
signed documents +  
executed copies of  
attached drawings and  
field work.*

*Ches will require  
daily allocation  
of CTown K-1's  
for 1991*



~~CERTIFICATE OF AMENDMENT~~

~~OF THE~~

~~CERTIFICATE OF LIMITED PARTNERSHIP~~

~~OF~~

~~GAETANO ASSOCIATES - LIMITED PARTNERSHIP~~

Under Section 121-202 of the Revised Limited Partnership Act

The undersigned, being a General Partner of Gaetano Associates - Limited Partnership hereby certifies that:

1. The name of the Partnership is Gaetano Associates - Limited Partnership.

2. A Certificate of Adoption of Revised Limited Partnership Act under Section 121-1202 of the Revised Limited Partnership Act (the "Certificate") was filed with the New York Secretary of State's office on July 23, 1991.

3. ~~A certificate of amendment was filed with the New York Secretary of State's office on September 11, 1990 to reflect the withdrawal of Brian Gaetano as a general partner on July 9, 1991.~~

~~The certificate is hereby amended to reflect the withdrawal of William C. Gaetano, Charles N. Gaetano, Mary J. Gaetano, Colleen W. Gaetano, and Gregory Gaetano as limited partners. Each of these limited partners withdrew as limited partners on December 31, 1991.~~

IN WITNESS WHEREOF, I have made and subscribed this  
Certificate this \_\_\_\_\_ day of January, 1992 and affirm that the  
statements made herein are true under the penalties of perjury.

\_\_\_\_\_  
Charles A. Gaetano  
General Partner

STATE OF NEW YORK     )  
                              )   SS.:  
COUNTY OF \_\_\_\_\_)

CHARLES A. GAETANO, being duly sworn, deposes and says,  
that he is the person described in and who executed the  
foregoing Certificate, that he has read the same and knows the  
contents thereof, and that the statements contained therein are  
true.

\_\_\_\_\_  
Charles A. Gaetano

Sworn to before me this  
\_\_\_\_\_ day of January, 1992.

\_\_\_\_\_  
Notary Public

JAM166/GA005

~~SECOND AMENDMENT~~

~~TO~~

~~GAETANO ASSOCIATES - LIMITED PARTNERSHIP~~

---

This Second Amendment to the Gaetano Associates - Limited Partnership (the "Partnership") Limited Partnership Agreement ~~made effective this first day of December, 1991~~ by and among CHARLES A. GAETANO, MRS. CORNELIA GAETANO, WILLIAM C. GAETANO, CHARLES N. GAETANO, MARY J. GAETANO, COLLEEN A. GAETANO and GREGORY GAETANO.

WHEREAS, the parties hereto are parties to a certain agreement of limited partnership for Gaetano Associates dated as of April 1, 1979 (the "Partnership Agreement");

WHEREAS, ~~the Partnership Agreement was subsequently amended to reflect the withdrawal of Brian Gaetano as a partner, and~~

~~WHEREAS, William C. Gaetano, Charles N. Gaetano, Mary J. Gaetano, Colleen A. Gaetano, and Gregory Gaetano have elected to withdraw as limited partners in the Partnership.~~

NOW, THEREFORE, in consideration of the mutual covenants, promises and considerations herein contained and for other good and valuable consideration receipt of which is hereby acknowledged the parties agree as follows:

~~1. Effective as of December 31, 1991 William C. Gaetano, Charles N. Gaetano, Mary J. Gaetano, Colleen A. Gaetano and Gregory Gaetano shall hereby withdraw as limited~~

~~partners in the Partnership for all purposes of the Partnership Agreement and the Revised Limited Partnership Act of the State of New York (the "Act").~~

~~2. Effective as of December 31, 1991, Charles A. Gaetano shall be the sole general partner and Cornelia Gaetano shall be the sole limited partner of the partnership for all purposes of the Partnership Agreement and the Act.~~

3. Section 1.01 of the Partnership Agreement is hereby amended to read as follows:

<u>Name</u>	<u>Status</u>	<u>Ratio of Capital and Profits and Losses</u>
<del>Charles A. Gaetano</del>	<del>General Partner</del>	<del>7/18</del>
<del>Cornelia Gaetano</del>	<del>Limited Partner</del>	<del>11/18</del>

IN WITNESS WHEREOF, the parties have executed this First Amendment Agreement effective as of the 31st day of December, 1991.

\_\_\_\_\_  
WILLIAM C. GAETANO

\_\_\_\_\_  
CHARLES N. GAETANO

\_\_\_\_\_  
MARY J. GAETANO

\_\_\_\_\_  
COLLEEN A. GAETANO

\_\_\_\_\_  
GREGORY GAETANO

# HANCOCK & ESTABROOK

COUNSELORS AT LAW

1500 MONY TOWER I

P.O. BOX 4976

SYRACUSE, NEW YORK 13221-4976

TELEPHONE (315) 471-3151

TELECOPIER (315) 471-3157

125 WOLF ROAD

ALBANY, NEW YORK 12205

TELEPHONE (518) 458-7680

TELECOPIER (518) 458-7731

March 10, 1992

JOHN M. HASTINGS, JR.  
W. CARROLL COYNE  
DONALD P. MC CARTHY  
PAUL M. MANRAHAN  
EDWARD J. FIDEL  
JOHN R. VAREY  
WILLIAM L. ALLEN, JR.  
CHARLES M. UMSRECHT, JR.  
DONALD J. KEMPLE  
CARL W. PETERSON, JR.  
CLARK A. PITCHER  
JAMES R. MC VETY  
ROBERT A. SMALL  
WALTER L. MEAGHER, JR.  
DONALD A. DENTON  
DAVID W. LARRISON  
J. THOMAS BASSETT  
RICHARD W. COOK  
JOHN M. DE LANEY  
DAVID S. HOWE  
GREGORY R. THORNTON  
DOREEN A. SIMMONS  
MICHAEL E. O'CONNOR  
DAVID E. PEEBLES  
JAMES E. SPARKES  
JAMES J. CANFIELD  
GERALD F. STACK  
JAMES E. HUGHES  
JEFFREY B. ANDRUS  
JANET O. CALLAHAN  
THOMAS C. BUCKEL, JR.  
MICHAEL L. CORP  
DANIEL B. BERNAN  
JOHN T. MC CANN  
STEVEN R. SHAW  
DAVID T. GARVEY  
JOHN L. MURAD, JR.  
STEPHEN A. DONATO  
KENNETH P. HOLDEN  
MARK J. SCHULTE  
ALAN J. PIERCE

RAYMOND A. MUST  
A. VAN W. HANCOCK  
CHARLES M. BASSETT  
COUNSEL

NANCY FRIEL HORNIK  
MARTHA L. BERRY  
LAURA A. PUSCO  
MARION HANCOCK FISH  
BARBARA L. PRENDERGAST  
R. JOHN CLARK  
RENEE L. JAMES  
DAVID G. LINGER  
PATRICIA A. CROSBY  
MICHAEL A. CROPALLO  
ELIZABETH A. SALVAGNO  
CAMILLE A. WOLNIK  
PATRICK M. CONNORS  
ANTHONY M. D'EREDITA  
TIMOTHY P. MURPHY  
KATHY R. LAKE  
CORA A. ALSANTE  
DEBRA A. CHINI  
ROBERT S. LIDDELL  
EDWARD J. SMITH, III  
SARAH GRACE CAMPBELL  
CAROL M. GURRIE

## PERSONAL AND CONFIDENTIAL

Brian A. Gaetano  
BRIAN A. GAETANO COMPANY, INC.  
258 Genesee Street  
Utica, New York 13502

Dear Brian:

So that your records are complete, enclosed please find a copy of the Certificate of Amendment of the Certificate of Limited Partnership of Gaetano Associates reflecting the withdrawal of your brothers and sisters as limited partners.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

HANCOCK & ESTABROOK

Gerald F. Stack

GFS/sjl  
Enclosure

cc: Peter Freer

Misc/Misc.129

INFO

INFO

{ 92030200022 }

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF LIMITED PARTNERSHIP  
OF

GAETANO ASSOCIATES - LIMITED PARTNERSHIP

Under Section 121-202 of the Revised Limited Partnership Act

The undersigned, being a General Partner of Gaetano Associates - Limited Partnership hereby certifies that:

1. The name of the Partnership is Gaetano Associates - Limited Partnership.
2. A Certificate of Adoption of Revised Limited Partnership Act under Section 121-1202 of the Revised Limited Partnership Act (the "Certificate") was filed with the New York Secretary of State's office on July 23, 1991.
3. A Certificate of Amendment was filed with the New York Secretary of State's office on September 11, 1991 to reflect the withdrawal of Brian Gaetano as a general partner on July 9, 1991. Paragraph 6 of the Certificate of Adoption of Revised Limited Partnership Act was amended to read as follows:

"6. The name and the business address of each general partner of the Partnership is as follows:

<u>Name</u>	<u>Business Address</u>
Charles A. Gaetano	311 Turner Street Utica, New York 13501"

4. The Certificate is hereby amended to reflect the withdrawal of William C. Gaetano, Charles N. Gaetano, Mary J. Gaetano, Colleen A. Gaetano, and Gregory Gaetano as limited partners. Each of these limited partners withdrew as limited partners on December 31, 1991.

[ EXHIBIT B ]

IN WITNESS WHEREOF, I have made and subscribed this  
Certificate this 20 day of January, 1992 and affirm that the  
statements made herein are true under the penalties of perjury.

Charles A. Gaetano  
Charles A. Gaetano  
General Partner

STATE OF NEW YORK     )  
                                  ) SS.:  
COUNTY OF ONEIDA     )

CHARLES A. GAETANO, being duly sworn, deposes and says,  
that he is the person described in and who executed the  
foregoing Certificate, that he has read the same and knows the  
contents thereof, and that the statements contained therein are  
true.

Charles A. Gaetano  
Charles A. Gaetano

Sworn to before me this  
20 day of January, 1992.

John N. Kinney  
Notary Public

JOHN N. KINNEY  
Notary Public, State of New York  
Qualifies in Oneida County  
Commission Expires 6-30-93

JAM166/GA005

920302000223

INFO  
H 0300-870515

FILED

MAR 2 4 50 PM '92

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
GAETANO ASSOCIATES - LIMITED PARTNERSHIP

Under Section 121-202 of the Revised Limited Partnership Act

*See 1/4*

1-cc

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 02 1992

TAX \$

BY:

0

*Jfw*

FILED

920302000240

3

HANCOCK & ESTABROOK

COUNSELORS AT LAW

MONY TOWER I

P.O. BOX 4976

STATE OF NEW YORK 12221-4976



N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE  
ALBANY, NY 12231

FILING RECEIPT

CORPORATION NAME: GAETANO ASSOCIATES - LIMITED PARTNERSHIP

DOCUMENT TYPE : AMENDMENT (DOM LP)  
WITHDRAW PARTNER

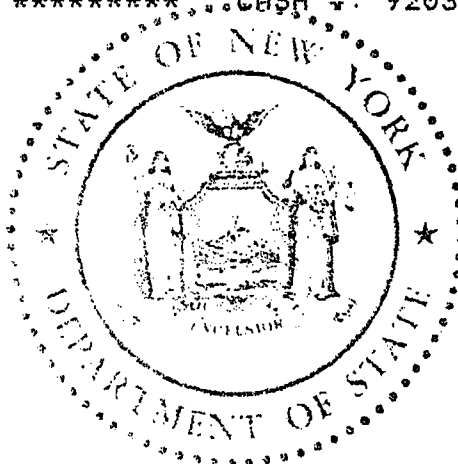
COUNTY: ONEI

SERVICE COMPANY : INFOSEARCH, INC.

FILED: 03/02/1992 DURATION: \*\*\*\*\* CASH #: 920302000240 FILM #: 920302000223

ADDRESS FOR PROCESS

REGISTERED AGENT



FILER	FEES		PAYMENTS	
HANCOCK & ESTABROOK	FILING :	60.00	CASH :	0.00
COUNSELORS AT LAW	TAX :	0.00	CHECK :	0.00
MONY TOWER I, P.O. BOX 4976	CERT :	0.00	BILLED:	70.00
SYRACUSE, NY 13221-4976	COPIES :	10.00		
	HANDLING:	0.00	REFUND:	0.00

08-1025 (11/89)

[EXHIBIT C]

State of New York }  
Department of State } ss:

014457

*I hereby certify that I have compared the annexed copy with the original document filed by the Department of State and that the same is a correct transcript of said original.*

*Witness my hand and seal of the Department of State on*

MAR 2 - 1992



*Secretary of State*

f950413000251

N. I. S.-27

CERTIFICATE OF CONVERSION OF LIMITED PARTNERSHIP  
TO A LIMITED LIABILITY COMPANY  
OF

GAETANO ASSOCIATES-LIMITED PARTNERSHIP

UNDER SECTION 1006 OF THE LIMITED LIABILITY COMPANY LAW

FIRST: The limited partnership was in accordance with the provisions of the Limited Liability Company Law, duly converted to a limited liability company.

SECOND: The name of the limited partnership was:  
Gaetano Associates-Limited Partnership.

THIRD: The name of the limited liability company is:  
Gaetano Associates, LLC.

FOURTH: The county within this state in which the office of the limited liability company is to be located is Oneida.

FIFTH: The Secretary of State is designated as the agent of the limited liability company upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of process against the limited liability company served upon him or her is: c/o Gerald F. Stack, Esq., Hancock & Estabrook, LLP, Mony Tower I, P. O. Box 4976, Syracuse, New York 13221.

SIXTH: The limited liability company is to be managed by one or more managers.

IN WITNESS WHEREOF, this certificate has been subscribed this 30<sup>th</sup> day  
of March 1995, by the undersigned who affirms that the statements made herein are true  
under the penalties of perjury.

  
Charles A. Gaetano, Member

GFS/GAET001

2

f95041300025/

CERTIFICATE OF CONVERSION OF LIMITED PARTNERSHIP  
TO A LIMITED LIABILITY COMPANY  
OF  
GAETANO ASSOCIATES-LIMITED PARTNERSHIP  
UNDER SECTION 1006 OF THE LIMITED LIABILITY COMPANY LAW

1

N. I. S.-27

RECEIVED

APR 12 10 29 AM '95

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED APR 13 1995  
TAX \$ \_\_\_\_\_  
BY: SB

Gerald F. Stack, Esq.  
Hancock & Estabrook, LLP  
Mony Tower I, P. O. Box 4976  
Syracuse, New York 13221

3

950413000268

*State of New York*      }  
*Department of State*   }

ss:

*I hereby certify that I have compared the annexed copy with the original documents filed by the Department of State and that the same is a correct transcript of said original.*

APR 13 1995

*Witness my hand and seal of the Department of State on*

*Alexander F. Treadwell*

*Secretary of State*

[EXHIBIT D]

FILING RECEIPT

ENTITY NAME : GAETANO ASSOCIATES, LLC

DOCUMENT TYPE : CERTIFICATE OF CONVERSION (DOM LLC)  
NAME

COUNTY: ONEI

SERVICE COMPANY : NATIONWIDE INFORMATION SERVICES, INC.

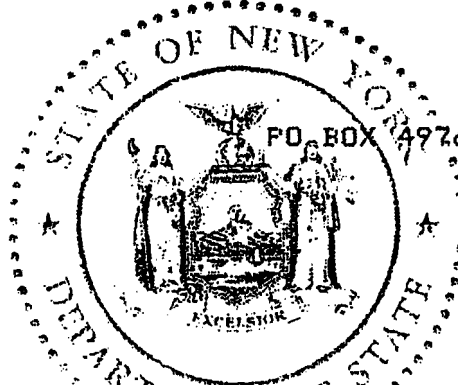
SERVICE CODE: 27

FILED: 04/13/1995 DURATION: PERPETUAL CASH #: 950413000268 FILM #: 95041300025

ADDRESS FOR PROCESS

GERALD F. STACK, ESQ.  
HANCOCK & ESTABROOK, LLP  
SYRACUSE, NY 13221

REGISTERED AGENT



PO BOX 4976 - MONY TOWER

HIS FILING HAS AN ASSOCIATED PUBLICATION REQUIREMENT. THE NEWSPAPERS IN WHICH THIS PUBLICATION IS TO BE MADE ARE DESIGNATED BY THE COUNTY CLERK OF THE COUNTY IN WHICH THE ENTITY'S OFFICE IS LOCATED. CONTACT THE RESPECTIVE COUNTY CLERK FOR FURTHER INFORMATION.

FILER	FEES		PAYMENTS	
GERALD F. STACK, ESQ.	FILING :	25.00	CASH :	0.00
HANCOCK & ESTABROOK, LLP	TAX :	0.00	CHECK :	0.00
PO BOX 4976 - MONY TOWER	CERT :	0.00	BILLED:	35.00
SYRACUSE, NY 13221	COPIES :	10.00		
	HANDLING:	0.00		
			REFUND:	0.00

[EXHIBIT F]

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE  
ALBANY, NY 12231

FILING RECEIPT

ENTITY NAME : GAETANO ASSOCIATES - LIMITED PARTNERSHIP

DOCUMENT TYPE : CANCELLATION DOM L.P.

COUNTY: ONEI

SERVICE COMPANY : NATIONWIDE INFORMATION SERVICES, INC.

SERVICE CODE: 27

FILED: 04/13/1995 DURATION: \*\*\*\*\* CASH #: 950413000263 FILM #: 95041300024

ADDRESS FOR PROCESS

REGISTERED AGENT



FILER	FEES	70.00	PAYMENTS	70.00
GERALD F. STACK, ESQ.	FILING :	60.00	CASH :	0.00
HANCOCK & ESTABROOK, LLP	TAX :	0.00	CHECK :	0.00
PO BOX 4976 - MONY TOWER	CERT :	0.00	BILLED:	70.00
SYRACUSE, NY 13221	COPIES :	10.00		
	HANDLING:	0.00	REFUND:	0.00

[EXHIBIT G]



f 950413000248

11.1.95-21

CERTIFICATE OF CANCELLATION OF LIMITED PARTNERSHIP

OF

GAETANO ASSOCIATES-LIMITED PARTNERSHIP

UNDER SECTION 121-203 OF THE REVISED LIMITED PARTNERSHIP ACT


FIRST: The name of the limited partnership is Gaetano Associates-Limited Partnership.

SECOND: The Certificate of Limited Partnership was filed with the Secretary of State New York on July 23, 1991.

THIRD: The limited partnership was converted to a Limited Liability Company pursuant to the provisions of the Limited Liability Company Law.

FOURTH: The name of the limited liability company is Gaetano Associates, LLC.

IN WITNESS WHEREOF, this certificate has been subscribed this 6 day of April, 1995, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

  
Charles A. Gaetano, General Partner

f950413000248

CERTIFICATE OF CANCELLATION OF LIMITED PARTNERSHIP

OF

GAETANO ASSOCIATES-LIMITED PARTNERSHIP

UNDER SECTION 121-203 OF THE REVISED LIMITED PARTNERSHIP ACT

2

N. I. S.-27

RECEIVED

APR 12 10 29 AM '95

1-2  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED APR 13 1995

TAX \$

BY: SB

Gerald F. Stack, Esq.  
Hancock & Estabrook, LLP  
Mony Tower I, P. O. Box 4976  
Syracuse, New York 13221

2

95041300026

[EXHIBIT E]

*State of New York        }* *ss:*  
*Department of State    }*

*I hereby certify that I have compared the annexed copy with the original documents filed by the Department of State  
and that the same is a correct transcript of said original.*

APR 13 1995

*Witness my hand and seal of the Department of State on*

*Alexander F. Treadwell*

*Secretary of State*

**AGREEMENT AND PLAN OF ACQUISITION****OF****GAETANO ASSOCIATES, LLC  
A NEW YORK LIMITED LIABILITY COMPANY****AND****CONSOLIDATED AMERICAN INDUSTRIES CORPORATION  
A NEVADA CORPORATION, as the acquiring corporation**

THIS AGREEMENT AND PLAN OF ACQUISITION (the "Agreement"), is entered into as of this 23rd day of September, 2005, by and between Gaetano Associates, LLC, a New York limited liability company (the "Target") and Charles A. Gaetano (collectively the "Sellers"), and Consolidated American Industries Corporation, a Nevada corporation (the "Buyer" and, together with the Sellers and the Target, the "Parties").

WHEREAS, the Boards of Directors of Buyer and Target have approved this Agreement and deem it advisable and in the best interests of each corporation and its respective shareholders to enter into this Agreement and consummate the transactions contemplated hereby and thereby; and

WHEREAS, the Sellers in the aggregate own all of the interest of Gaetano Associates, LLC, a New York limited liability company (the "Target"); and

WHEREAS, this Agreement contemplates a transaction in which the Buyer will purchase from the Sellers, and the Sellers will sell to the Buyer, all of the outstanding interest of the Target in return for the Buyer's Common Stock;

WHEREAS, for federal income tax purposes, it is intended that the Acquisition, as defined below shall qualify as a tax free reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code");

Now, therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representatives, warranties, and covenants herein contained, the Parties agree as follows.

**1. Purchase and Sale of Target Shares.**

**1.01 Basic Transaction.** On and subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from each of the Sellers, and each of the Sellers agrees to sell to the Buyer, all of his or its interest for the consideration specified below.

**1.02 Purchase Price.** The Buyer agrees to pay to the Sellers at the Closing (the "Purchase Price") by delivery of (A) One Million (1,000,000) shares of Consolidated American Industries Corporation, a Nevada corporation, common capital stock (ticker symbol Pink Sheets "CDMJ") valued as of the date of closing, or on such other date as agreed upon by the parties (the "Buyer Common Stock") and (B) Five Hundred Thousand Dollars (\$500,000.00 US) cash payable to Charles H. Gaetano, sole owner of Gaetano Associates, LLC, by wire transfer or delivery of other immediately available funds.

**1.03 The Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Gaetano Associates, LLC, 311 Turner Street, Utica, New York 13501, commencing at 9:00 a.m. local time on the second business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Buyer and the Sellers may mutually determine (the "Closing Date"); provided, however, that the Closing Date shall be no earlier than September 25, 2005.

[EXHIBIT H]

1.04 *Deliveries at the Closing.* At the Closing, (A) the Sellers will deliver to the Buyer the various certificates, instruments, and documents referred to herein, (B) the Buyer will deliver to the Sellers the various certificates, instruments, and documents referred to herein, (C) each of the Sellers will deliver to the Buyer certificates representing all of his or its interest, endorsed in blank or accompanied by duly executed assignment documents, and (D) the Buyer will deliver to each of the Sellers the consideration specified above.

1.05 *Buyer Financing.* This Contract is conditioned on Buyer obtaining a written loan commitment within thirty (30) days after execution of this agreement. Buyer will make application immediately after execution of this agreement and use reasonable diligence to obtain a loan commitment and, thereafter, to satisfy terms and conditions of the commitment and close the loan. Buyer shall pay all loan expenses. If Buyer fails to obtain a commitment or fails to waive Buyer's rights under this subparagraph within the time for obtaining a commitment or, after diligent effort, fails to meet the terms and conditions of the commitment by the closing date, then either party thereafter, by written notice to the other, may cancel this Contract.

2. *Representations and Warranties Concerning the Transaction.*

2.01 *Representations and Warranties of the Sellers.* Each of the Sellers represents and warrants to the Buyer that the statements contained herein are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date.

2.01.1 *Organization of Certain Sellers.* If the Seller is a corporation, the Seller is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation.

2.01.2 *Authorization of Transaction.* The Seller has full power and authority (including, if the Seller is a corporation, full corporate power and authority) to execute and deliver this Agreement and to perform his or its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Seller, enforceable in accordance with its terms and conditions. The Seller need not give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

2.01.3 *Noncontravention.* To the best of our knowledge and upon information and belief neither the execution and the delivery of this Agreement, nor the consummation of the transaction contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Seller is subject or, if the Seller is a corporation, any provision of its charter or bylaws, or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Seller is a party or by which he or it is bound or to which any of his or its assets is subject.

2.01.4 *Brokers' Fees.* The Seller has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transaction contemplated by this Agreement for which the Buyer could become liable or obligated.

2.01.5 *Investment.* The Seller (A) understands that the Buyer Common Stock has not been, and will not be, registered under the Securities Act, or under any state securities laws, and is being offered and sold in reliance upon federal and state exemptions for transactions not involving any public offering, (B) is acquiring the Buyer Common Stock solely for his or its own account for investment purposes, and not with a view to the distribution thereof, (C) is a sophisticated investor with knowledge and experience in business and financial matters, (D) has received certain information concerning the Buyer and has had the opportunity to obtain additional information as desired in order to evaluate the merits and the risks inherent in holding the Buyer Common Stock, (E) is able to bear the economic risk and lack of liquidity inherent in holding the Buyer Common Stock, and (F) is an Accredited Investor.

2.01.6 *Target Interest.* The Seller holds of record and owns all of the stock in the corporation free and clear of any restrictions on transfer (other than any restrictions under the Securities Act and state securities laws), taxes, security interests, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. The

Seller is not a party to any option, warrant, purchase right, or other contract or commitment that could require the Seller to sell, transfer, or otherwise dispose of any interest of the Target (other than this Agreement).

**2.02 Representations and Warranties of the Buyer.** The Buyer represents and warrants to the Sellers that the statements contained herein are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date.

**2.02.1 Organization of the Buyer.** The Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada.

**2.02.2 Authorization of Transaction.** The Buyer has full power and authority (including full corporate power and authority) to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of the Buyer, enforceable in accordance with its terms and conditions. The Buyer need not give any notice to, make any filing with, or obtain authorization, consent, or approval of any government or governmental agency in order to consummate the transactions contemplated by this Agreement.

**2.02.3 Noncontravention.** To the best of our knowledge and upon information and belief neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Buyer is subject or any provision of its charter or bylaws or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require, any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Buyer is a party or by which it is bound or to which any of its assets is subject.

**2.02.4 Brokers' Fees.** The Buyer has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transaction contemplated by this Agreement for which any Seller could become liable or obligated.

**2.02.5 Investment.** The Buyer is not acquiring the Target interest with a view toward resale in connection with any distribution thereof within the meaning of the Securities Act.

**2.03 Representatives and Warranties Concerning the Target and Its Subsidiaries.** The Sellers represent and warrant to the Buyer that the statements contained herein are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date, except as set forth in the disclosure schedule delivered by the Sellers to the Buyer on the date hereof and initialed by the Parties (the "Disclosure Schedule").

**2.03.1 Organization, Qualification, and Corporate Power.** The Target is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. The Target is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required. The Target has full corporate power and authority and all licenses, permits, and authorizations necessary to carry on the business in which it is engaged, and in which it presently proposes to engage, and to own and use the properties owned and used by it. The Sellers will deliver to the Buyer correct and complete copies of the charter, bylaws and/or operating agreement of the Target (as amended to date). The minute books, the stock certificate books, and the stock record books of the Target will be correct and complete.

**2.03.2 Noncontravention.** To the best of our knowledge and upon information and belief neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (A) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Target is subject or any provision of its charter or bylaws, or (B) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require, any notice under any agreement, contract, lease, license, instrument, or other arrangement to which the Target is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Security Interest upon any of its assets). The Target does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any

government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement.

**2.03.3 Brokers' Fees.** None of the Target and its Subsidiaries has any liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

**2.03.4 Title to Assets.** The Target has good and marketable title to, or a valid leasehold interest in, the properties and assets used by them, located on their premises, or shown on the most recent balance sheet or acquired after the date thereof, free and clear of all Security Interests, except for properties and assets disposed of in the Ordinary Course of Business since the date of the Most Recent Balance Sheet, or properties securing mortgages as indicated in the Disclosure Schedule attached hereto.

**2.03.5 Subsidiaries.** The Seller warrants there are no subsidiaries of the Target.

**2.03.6 Financial Statements.** Attached hereto as Exhibit A are the following financial statements (collectively the "Financial Statements"): (A) balance sheets and statements of income as of and for the fiscal years ended 2002, 2003 and 2004 (the "Most Recent Fiscal Year End") for the Target, and (B) and balance sheets and statements of income, changes in stockholders' equity, and cash flow (the "Most Recent Financial Statements") as of and for the seven (7) months ended July 31, 2005 (the "Most Recent Fiscal Month End") for the Target. The Financial Statements (including the notes thereto) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, present fairly the financial condition of the Target as of such dates and the results of operations of the Target for such periods, are correct and complete, and are consistent with the books and records of the Target; provided, however, that the Most Recent Financial Statements are subject to normal year-end adjustments (which will not be material individually or in the aggregate) and lack footnotes and other presentation items.

**2.03.7 Events Subsequent to Most Recent Fiscal Year End.** Since the Most Recent Fiscal Year End, there has not been any adverse change in the business, financial condition, operations, results of operations, or future prospects of any of the Target.

**2.03.8 Undisclosed Liabilities.** The Target has no liability, and there is no basis for any present action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of them giving rise to any liability, except for (A) liabilities set forth on the face of the most recent balance sheet (rather than in any notes thereto) and (B) liabilities which have arisen after the Most Recent Fiscal Month End in the ordinary course of business (none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law).

**2.03.9 Legal Compliance.** The Target has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure to comply.

**2.03.10 Tax Matters.** The Target has filed all tax returns that it was required to file. All such tax returns were correct and complete in all respects. All taxes owed by the Target (whether or not shown on any tax return) have been paid. The Target currently is not the beneficiary of any extension of time within which to file any tax return. No claim has ever been made by an authority in a jurisdiction where the Target does not file tax returns that it is or may be subject to taxation by that jurisdiction. There are no security interests on any of the assets of the Target that arose in connection with any failure (or alleged failure) to pay any tax.

**2.03.10.1** The Target has withheld and paid all taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

**2.03.10.2** No Seller or director or officer (or employee responsible for Tax matters) of the Target expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Tax Liability of the Target either (A) claimed or raised by any authority in writing or (B) as to which any of the Sellers and the directors and officers (and employees responsible for Tax matters) of

the Target has knowledge based upon personal contact with any agent of such authority. The Disclosure Schedule lists all federal, state, local, and foreign income Tax Returns filed with respect to the Target, and indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Sellers have delivered to the Buyer correct and complete copies of all federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by any of the Target and its Subsidiaries.

2.03.10.3 The Target has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

2.03.10.4 The Target has not filed a consent under Code Sec. 341 (f) concerning collapsible corporations.

2.03.11 *Real Property.*

2.03.11.1 The Disclosure Schedule lists and describes briefly all real property that any of the Target and its Subsidiaries owns. With respect to each such parcel of owned real property:

2.03.11.1.1 The identified owner has good and marketable title to the parcel of real property, free and clear of any Security Interest, except as indicated in the Disclosure Statement, easement, covenant, or other restriction, except for installments of special assessments not yet delinquent and recorded easements, covenants, and other restrictions which do not impair the current use, occupancy, or value, or the marketability of title, of the property subject thereto;

2.03.11.1.2 There are no pending or threatened condemnation proceedings, lawsuits, or administrative actions relating to the property;

2.03.11.1.3 The legal description for the parcel contained in the deed thereof describes such parcel fully and adequately, the buildings and improvements are located within the boundary lines of the described parcels of land, are not in violation of applicable setback requirements, zoning laws, and ordinances (and none of the properties or buildings or improvements thereon are subject to "permitted non-conforming use" or "permitted non-conforming structure" classifications), and do not encroach on any easement which may burden the land, and the land does not serve any adjoining property for any purpose inconsistent with the use of the land, and the property is not located within any flood plain or subject to any similar type restriction for which any permits or licenses necessary to the use thereof have not been obtained;

2.03.11.1.4 All facilities have received all approvals of governmental authorities (including licenses and permits) required in connection with the ownership or operation thereof and have been operated and maintained in accordance with applicable laws, rules, and regulations;

2.03.11.1.5 There are no leases, subleases, licenses, concessions, or other agreements, written or oral, granting to any party or parties the right of use of occupancy of any portion of the parcel of real property, except as indicated in the Disclosure Statement;

2.03.11.1.6 There are no outstanding options of rights of first refusal to purchase the parcel of real property; or any portion thereof or interest therein, except that all real property located west of Turner Street is not included in the sale;

2.03.11.1.7 There are no parties in possession of the parcel of real property, other than tenants under any leases disclosed in the Disclosure Schedule who are in possession of space to which they are entitled;

2.03.11.1.8 All operating facilities located on the parcel of real property are supplied with utilities and other services necessary for the operation of such facilities, including gas, electricity, water, telephone, sanitary sewer, and storm sewer, all of which services are adequate in accordance with all applicable laws, ordinances, rules, and regulations and are provided via public reads or via permanent, irrevocable, appurtenant easements benefiting the parcel of real property; and



2.03.11.1.9 Each parcel of real property abuts on and has direct vehicular access to a public road, or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting the parcel of real property, and access to the property is provided by paved public right-of-way with adequate curb cuts available.

2.03.12 The Disclosure Schedule lists and describes briefly all real property leased or subleased by the Target. The Sellers have made available to the Buyer correct and complete copies of the leases and subleases.

2.04 *Tangible Assets.* The Target owns or leases all property, buildings, machinery, equipment, and other tangible assets necessary for the conduct of their business as presently conducted and as presently proposed to be conducted. Each such tangible asset is free from defects (patent and latent), has been maintained in accordance with normal industry practice, is in good condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used and presently is proposed to be used.

2.05 *Notes and Accounts Receivable.* All notes and accounts receivable of the Target are reflected properly on their books and records, are valid receivables subject to no setoffs or counterclaims, are current and collectible, and will be collected in accordance with their terms at their recorded amounts, subject only to the reserve for bad debts set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto) as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Target and its Subsidiaries.

2.06 *Powers of Attorney.* There are no outstanding powers of attorney executed on behalf of the Target.

2.07 *Insurance.* The Seller has made available to Buyer the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Target has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past two (2) years.

2.07.1 the name, address, and telephone number of the agent;

2.07.2 the name of the insurer, the name of the policyholder, and the name of each covered insured;

2.07.3 the policy number and the period of coverage;

2.07.4 the scope (including an indication of whether the coverage was on a claims made, occurrence, or other basis) and amount (including a description of how deductibles and ceilings are calculated and operate) of coverage; and

2.08 *Litigation.* The Seller warrants there is no litigation threatened or pending against the Target.

2.09 *Employees.* To the knowledge of any of the Sellers and the directors and officers (and employees with responsibility for employment matters) of the Target, no executive, key employee, or group of employees has any plans to terminate employment with the Target. The Target is not a party to or bound by any collective bargaining agreement, nor has any of them experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes.

2.10 *Employees Benefits.* The Seller warrants there are no employee benefit plans that the Target maintains or guarantees.

2.11 *Guaranties.* The Seller warrants that Target is not a guarantor or otherwise liable for any liability or obligation of any officer or employee of the corporation.

2.12 *Environment, Health, and Safety.*

2.12.1 There are no proceedings pending against the The Target for all environmental, health, and safety Laws, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced alleging any failure so to comply.

3. *Pre-Closing Covenants.* The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing.

3.01 *General.* Each of the Parties will use his or its best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the closing conditions set forth below).

3.02 *Notices and Consents.* The Sellers will cause the Target to give any notice to third parties, and will cause the Target to use its best efforts to obtain any third-party consents, that the Buyer may reasonably request in connection with the matters referred to above. If necessary, each of the Parties will give any notices to, make any filings with, and use its best efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to above. Without limiting the generality of the foregoing, each of the Parties will file any notification and report forms and related material that he or it may be required to file with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice under the Hart-Scott-Rodino Act, will use his or its best efforts to obtain an early termination of the applicable waiting period, and will make any further filings pursuant thereto that may be necessary, proper, or advisable in connection therewith.

3.03 *Operation of Business.* The Sellers will not cause or permit the Target to engage in any practice, take any action, or enter into any transaction outside the Ordinary Course of Business. Without limiting the generality of the foregoing, the Sellers will not cause or permit the Target to declare, set aside, or pay any dividend or make any distribution with respect to its capital stock or redeem, purchase, take any action, or enter into any transaction of the sort described above.

3.04 *Preservation of Business.* The Sellers will cause the Target to keep its business and properties substantially intact, including its present operations, physical facilities, working conditions, and relationships with lessors, licensors, customers, and employees.

3.05 *Full Access.* Each of the Sellers will permit, and the Sellers will cause the Target to permit, representatives of the Buyer to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Target, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to the Target.

3.06 *Notice of Development.* The Sellers will give prompt written notice to the Buyer of any material adverse development causing a breach of any of the representations and warranties herein. Each Party will give prompt written notes to the others of any material adverse development causing a breach of any of his or its own representations and warranties herein.

3.07 *Exclusivity.* None of the Sellers will (A) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to the acquisition of any capital stock or other voting securities, or any substantial portion of the assets of the Target (including any acquisition structured as a merger, consolidation, or share exchange) or (B) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other matter any effort or attempt by any person to do or seek any of the foregoing. None of the Sellers will vote their Target Shares in favor of any such acquisition structured as a merger, consolidation, or share exchange. The Sellers will notify the Buyer immediately if any person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.

4. *Post-Closing Covenants.* The Parties agree as follows with respect to the period following the Closing.

4.01 *General.* In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party may request, all at the sole cost and expense of the requesting Party. The Sellers acknowledge and agree that from and after the Closing the Buyer will be entitled to possession of all documents, books, records (including tax records), agreements, and financial data of any sort relating to the Target.

4.02 *Litigation Support.* In the event and for so long as any Party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand in connection with (A) any transaction contemplated under this Agreement or (B) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Target, each of the other Parties will cooperate with him or it and his or its counsel in the contest or defense, make available their personnel, and provide such testimony and access to their books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party.

4.03 *Transition.* None of the Sellers will take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier, or other business associate of the Target from maintaining the same business relationships with the Target after the Closing, as it maintained with the Target prior to the Closing.

4.04 *Confidentiality.* Each of the Sellers will treat and hold as such all of the confidential information, refrain from using any of the confidential information except in connection with this Agreement, and deliver promptly to the Buyer or destroy, at the request and option of the Buyer, all tangible embodiments (and all copies) of the confidential information which are in his or its possession. In the event that any of the Sellers is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any confidential information, that Seller will notify the Buyer promptly of the request or requirement so that the Buyer may seek an appropriate protective order or waive compliance with these provisions. If, in the absence of a protective order or the receipt of a waiver hereunder, any of the Sellers is, on the advice counsel, compelled to disclose any confidential information to any tribunal or else stand liable for contempt, that Seller may disclose the confidential information to the tribunal; *provided, however*, that the disclosing Seller shall use his or its best efforts to obtain, at the request of the Buyer, an order or other assurance that confidential treatment will be accorded to such portion confidential information required to be disclosed as the Buyer shall designate. The foregoing provisions shall not apply to any confidential information which is generally available to the public immediately prior to the time of disclosure.

4.05 *Buyer Common Stock.* Each Buyer common stock certificate will be imprinted with a legend substantially in the following form:

**THE SHARES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT IN TRANSACTIONS EXEMPT FROM REGISTRATION UNDER THE ACT OR ANY APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT.**

Each holder desiring to transfer a certificate must furnish the Buyer with (A) a written opinion satisfactory to the Buyer in form and substance from counsel satisfactory to the Buyer by reason of experience to the effect that the holder may transfer the certificate as desired without registration under the Securities Act and (B) a written undertaking executed by the desired transferee satisfactory to the Buyer in form and substance agreeing to be bound by the recumbent provisions and the restrictions on transfer contained herein.

5. *Conditions to Obligation to Close.*

5.01 *Conditions to Obligation of the Buyer.* The obligation of the Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

5.01.1 the representations and warranties set forth above shall be true and correct in all material respects at and as of the Closing Date;

5.01.2 the Sellers shall have performed and complied with all of their covenants hereunder in all material respects through the Closing;

5.01.3 the Target shall have procured all of the third party consents necessary as specified herein;

5.01.4 there is no action, suit, or proceeding pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, (C) affect adversely the right of the Buyer to own the Target Shares and to control the Target, or (D) affect adversely the right of the Target to own its assets and to operate its business (and no such injunction, judgment, order, decree, ruling, or charge shall be in effect);

5.01.5 all applicable waiting periods (and any extensions thereof) under the Hart-Scott-Rodino Act, if any, shall have expired or otherwise been terminated and the Parties shall have received all other authorizations, consents, and approvals of governments and governmental agencies referred to in above;

5.01.6 all actions to be taken by the Sellers in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Buyer.

The Buyer may waive any condition specified in this section if it executes a writing so stating at or prior to the Closing.

5.02 *Conditions to Obligation of the Sellers.* The obligation of the Sellers to consummate the transactions to be performed by them in connection with the Closing is subject to satisfaction of the following conditions:

5.02.1 the representations and warranties set forth in above shall be true and correct in all material respects at and as of the Closing Date;

5.02.2 the Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing;

5.02.3 no action, suit, or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge would (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation (and no such junction, judgment, order, decree, ruling, or charge shall be in effect);

5.02.4 all actions to be taken by the Buyer in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be satisfactory in form and substance to the Sellers.

The Sellers may waive any condition specified in this section if they execute a writing so stating at or prior to the Closing.

## 6. *Remedies for Breaches of This Agreement.*

6.01 *Survival of Representations and Warranties.* All of the representations and warranties of the Sellers contained herein shall survive the Closing hereunder and continue in full force and effect for a period of three years

thereafter. All of the other representations and warranties of the Parties contained in this Agreement shall survive the Closing and continue in full force and effect forever thereafter (subject to any applicable statutes of limitations).

**6.02 Matters Involving Third Parties.** If any third party shall notify any Party (the "Indemnified Party") with respect to any matter ("A Third Party Claim") under which may give rise to a claim for indemnification against any other Party (the "Indemnified Party"), then the Indemnified Party shall promptly notify each Indemnified Party thereof in writing; *provided, however*, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnified Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced.

## **7 Termination.**

**7.01 Termination of Agreement.** The Parties may terminate this Agreement as provided below:

**7.01.1** the Buyer and Sellers may terminate this Agreement by mutual written consent at any time prior to the Closing;

**7.01.2** the Buyer may terminate this Agreement by giving written notice to the Sellers on or before the 30<sup>th</sup> day following the date of this Agreement if the Buyer is not reasonably satisfied with the results of its continuing business, legal, and accounting due diligence regarding the Target;

**7.01.3** the Buyer may terminate this Agreement by giving written notice to the Sellers at any time prior to the Closing (A) in the event any of the Sellers has breached any material representation, warranty, or covenant contained in this Agreement in any material respect, the Buyer has notified the Requisite Sellers of the breach, and the breach has continued without cure for a period of 30 days after the notice of breach of (B) if the Closing shall not have occurred on or before October 30, 2005, by reason of the failure of any condition precedent herein (unless the failure results primarily from the Buyer itself breaching any representation, warranty, or covenant contained in this Agreement); and

## **8 Miscellaneous.**

**8.01 Press Releases and Public Announcements.** No Party shall issue a press release or make any public announcement relating the subject matter of this Agreement prior to the Closing without the prior written approval of the Buyer and the Requisite Sellers; *provided, however*, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its best efforts to advise the other Parties prior to making the disclosure).

**8.02 No Third-Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

**8.03 Entire Agreement.** This Agreement (including documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements, or representations by or among the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

**8.04 Succession and Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of his or its rights, interests, or obligations hereunder without the prior written approval of the Buyer and the Sellers; *provided, however*, that the Buyer may (A) assign any or all of its rights and interests hereunder to one of more of its affiliates and (B) designate one or more of its affiliates to perform its obligations hereunder (in any or all of which cases the Buyer nonetheless shall remain responsible for the performance of all of its obligations hereunder).

**8.05 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

8.06 *Headings.* The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

8.07 *Notices.* All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

*If to the Sellers:* Charles A. Gaetano  
311 Turner Street  
Utica, New York 13501

*Copy to:*

*If to the Buyers:* James S. Renaldo  
COAM Companies  
8010 Woodland Center Boulevard  
Suite 500  
Tampa, Florida 33614

*Copy to:*

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communication hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

8.08 *Governing Law.* This Agreement shall be governed by and construed in accordance with the domestic laws of the State of New York.

8.09 *Amendments and Waivers.* No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by the Buyer and Sellers. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

8.10 *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

8.11 *Expenses.* Each of the Parties, the Target, and its subsidiaries will bear his or its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transaction contemplated hereby.

8.12 *Construction.* The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

8.13 *Incorporation of Exhibits and Schedules.* The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

8.14 *Specific Performance.* Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their

specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth herein), in addition to any other remedy to which they may be entitled, at law or in equity.

8.15 *Submission to Jurisdiction.* Each of the Parties submits to the jurisdiction of any state or federal court sitting in Onondaga County, New York, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement in any other court. Each of the Parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process (A) to the Party to be served at the address and in manner provided for the giving of notices above or (B) to the Party to be served in care of the Process Agent at the address and in the manner provided for the giving of notices in above. Nothing herein, however, shall affect the right of any Party to serve legal process in any other manner permitted by law or at equity.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

Consolidated American Industries Corporation,

a Nevada corporation

By: 

James S. Renaldo, President

Gaetano Associates, LLC,

a New York limited liability company

By: 

Charles A. Gaetano, President

Charles A. Gaetano

By: 

# **Exhibit 3**



GAETANO ASSOCIATES  
 CHARLESTOWN MALL  
 LEASED AREA ANALYSIS  
 JANUARY 1, 1990

<u>BLDG. #4</u>	<u>AREA OCCUPIED</u>	<u>AREA UNOCCUPIED</u>	<u>TOTAL AREA</u>
1st. Floor	-	18,900	18,900
2nd. Floor	18,900	-	18,900
3rd. Floor	5,000 (Off. Space Non-retail)	13,900	18,900
4th. Floor	-	18,900	18,900
 <u>BLDG. #10</u>			
1st. Floor	7,500	6,000	13,500
2nd. Floor	13,500	-	13,500
3rd. Floor	4,000 (Off. Space Non-retail)	9,500	13,500
4th. Floor		13,500	13,500
 <u>BLDG. #12</u>			
1st. Floor	9,000	11,100	20,100
2nd. Floor	6,700	13,400	20,100
3rd. Floor	-	20,100	20,100
4th. Floor	-	20,700	20,700
 <u>BLDG. #13</u>			
1st. Floor	10,450	11,000	21,450
2nd. Floor	3,200	18,250	21,450
3rd. Floor	-	21,450	21,450
4th. Floor	-	22,050	22,050
	<hr/> 78,250	<hr/> 218,750	<hr/> 297,000

# CharlesTown

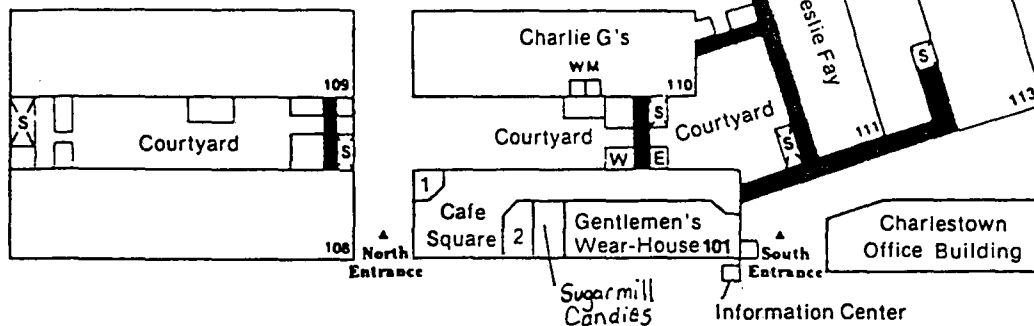
## Directory

### KEY

- ▲ — Entrances
- M — Men's Room
- W — Women's Room
- E — Elevator
- S — Stairs

FACTORY OUTLET CENTER  
311 Turner Street, Utica, New York 13501

### First Floor



CHARLIE G'S  
MATERNITY MAGIC

FUN FOODS  
SUGARMILL CANDIES  
PIZZA FACTORY

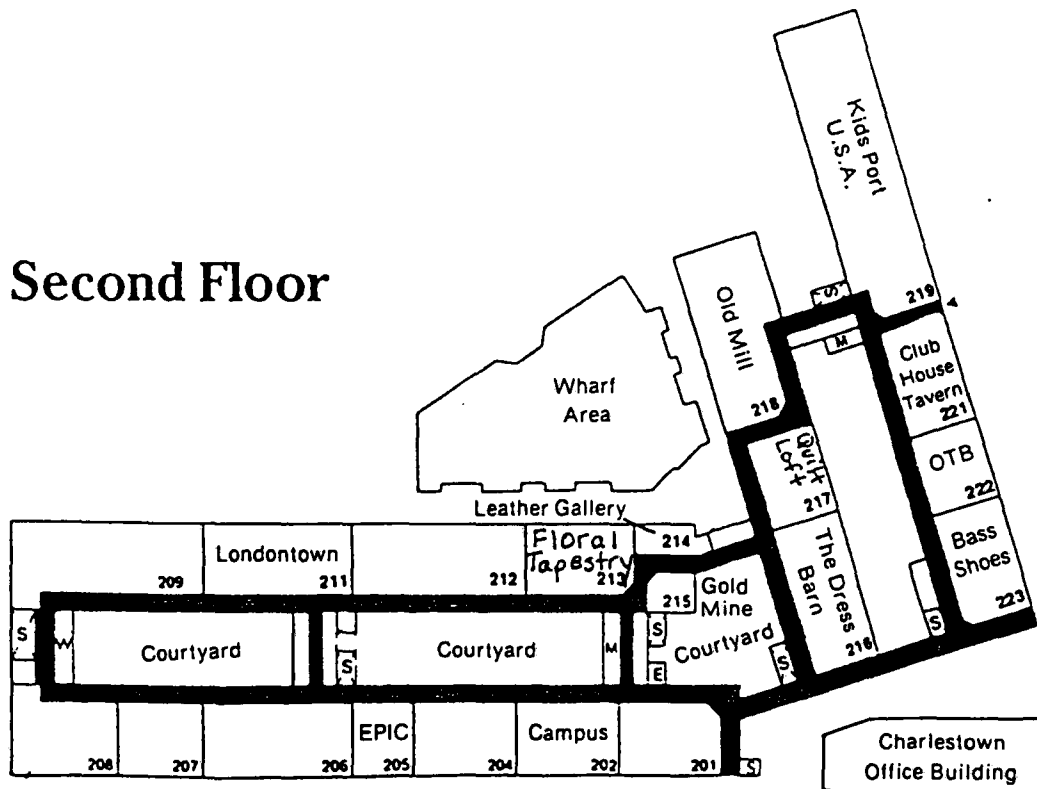
GENTLEMEN'S WEAR-HOUSE  
INFORMATION CENTER  
LESLIE FAY

@ 11/1/90

### Cafe Square

- 1 - Fun Foods
- 2 - Pizza Factory

### Second Floor



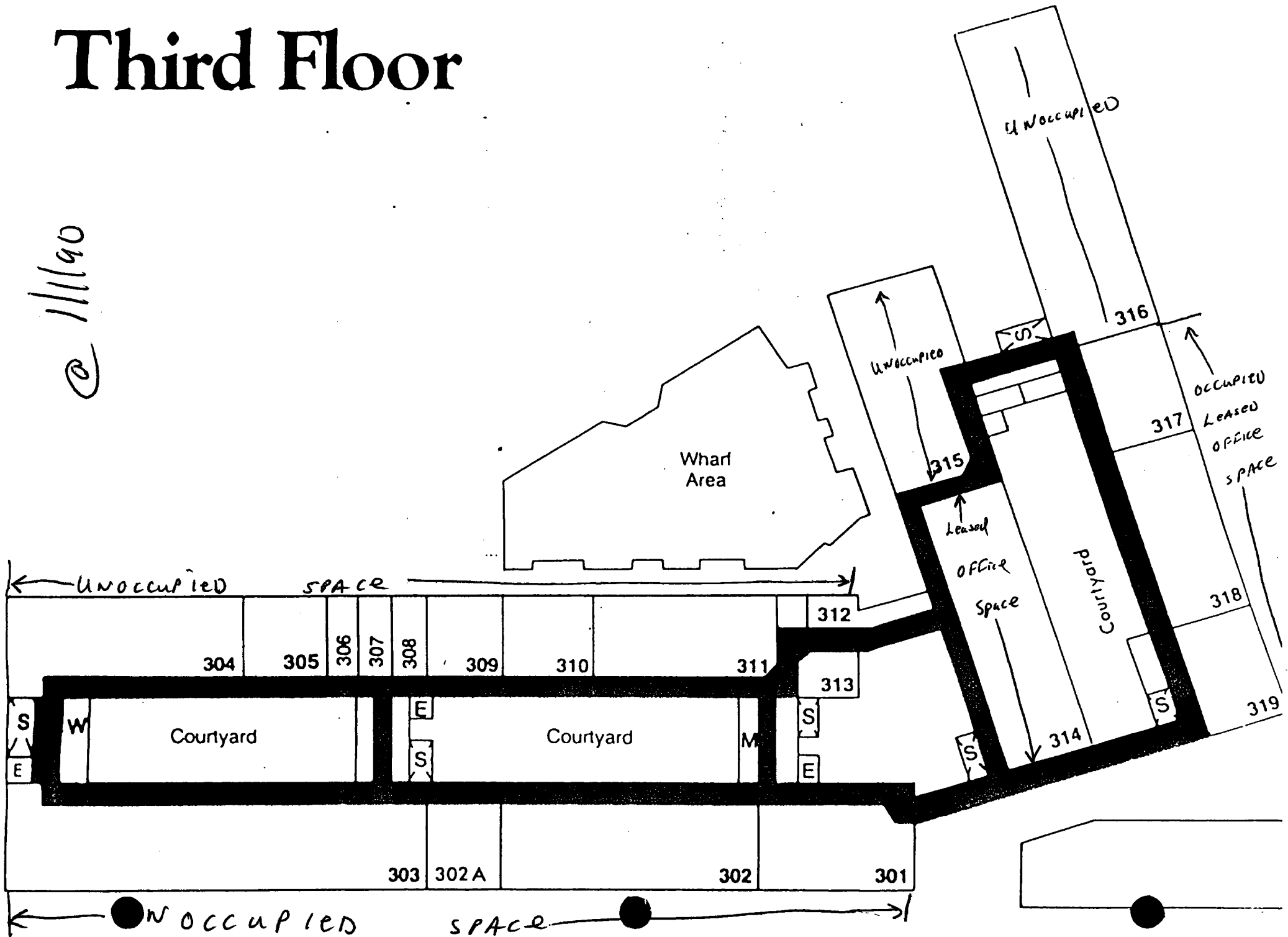
LONDON TOWN  
WORLD BAZAAR  
LEATHER GALLERY  
GOLD MINE  
COMMUNITY ROOM

EPIC COMPUTER CENTER  
QUILT LOFT  
CAMPUS  
FLORAL TAPESTRY  
THE DRESS BARN

OLD MILL  
BASS SHOES  
OTB  
CLUB HOUSE TAVERN  
KIDS PORT U.S.A

# Third Floor

@ 1/1/90



@ 11/1/90

CHARLESTOWN - RETAIL

<u>TENANTS</u>	<u>MONTHLY</u>	<u>ANNUALLY</u>	<u>4/1/90</u> <u>3/31/90</u>	<u>LEASE</u> <u>EXPIRATION</u>
BASS	\$ 2,570.00	\$ 30,840.00	30,840	3-31-91
CAMPUS	\$ 1,800.00	\$ 21,600.00	10,800	MONTHLY
COUNTRY MILL	\$ 2,037.75	\$ 21,453.00	21,453	
DRESS BARN - 3 months	\$ 2,520.00	\$ 15,120.00	7560	6-30-90
FUN FOOD	\$ 600.00	\$ 1,200.00	-	2-90
GENTLEMENS WAREHOUSE		\$ 35,000.00	26250	12-31-90
GOLDMINE	\$ 2,000.00	\$ 24,000.00	24000	
KIDSPORT	\$ 4,220.00	\$ 25,320.00	12660	6-30-90
LEATHER GALLERY	\$ 300.00	\$ 900.00	-	MONTHLY
LESLIE FAY	\$ 5,295.83	\$ 63,540.00	-	MONTHLY
LONDONTOWN	\$ 3,806.07	\$ 30,448.00	19030	8-31-90
B	\$ 4,649.83	\$ 55,798.00	55798	
WORLD BAZAAR*	\$ 4,370.80	\$ 43,708.00	-	*10-31-90

TOTAL = \$411,927.00      208391  
use 210000

CHARLESTOWN OFFICES

Offices	Amt. they pay monthly
Adirondack Window Products, Inc.	\$196.00
Aqua & Air Products	\$ 75.00
Atlantic Energy Systems	\$500.00
Business Services	\$168.75
Centron Security	\$ 540.00
Central NY Business Incubator Group	\$ 83.33
Chex & Balances	\$ 56.25
Chicago Pneumatic	\$ 672.00
Cooley Business Form	\$ 51.00
Dentec - effect.12/1/89 were paying \$135 prev. mo.	\$ 200.44
Empire Home Improvements	\$ 182.63
Hired Hands	\$ 153.75
Hygeia Research	\$ 500.00
ISS	\$ 247.00
Jetnet	\$3,000.00
Business Training Institute - Pat Laino	\$ 450.00
Midstate Steel	\$2,500.00
MIS	\$ 138.00
PC Advisors	\$ 150.00
Reon Alpha Micro	\$ 285.00
Revival Industries	\$ 168.75
Savoy Joseph	\$ 138.42
Therma Gard	\$ 82.70
Treasure Pak	\$ 84.38

Bldg # 1

Bldg # 1

CHARLESTOWN OFFICES

Offices	Amt. they pay monthly	
Utica Commit	\$ 375.00	Bldg # 1
United Credit Associates	\$ 192.19	
Utica Elevator	\$ 205.42	
Gaetano Construction	\$1,000.00	Bldg # 1

TOTAL - C.T. Offices

\$ 12,395.80

X 12

148740

use 150,000

# CharlesTown

## Directory

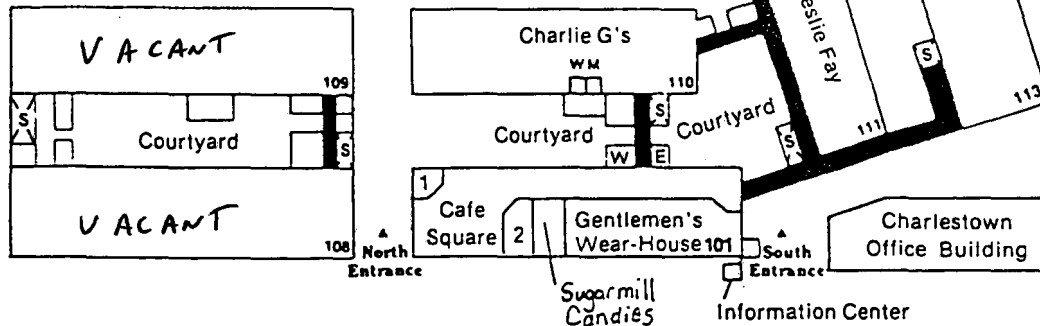
9-17-90

### KEY

- ▲ — Entrances
- M — Men's Room
- W — Women's Room
- E — Elevator
- S — Stairs

FACTORY OUTLET CENTER  
311 Turner Street, Utica, New York 13501

### First Floor



### Cafe Square

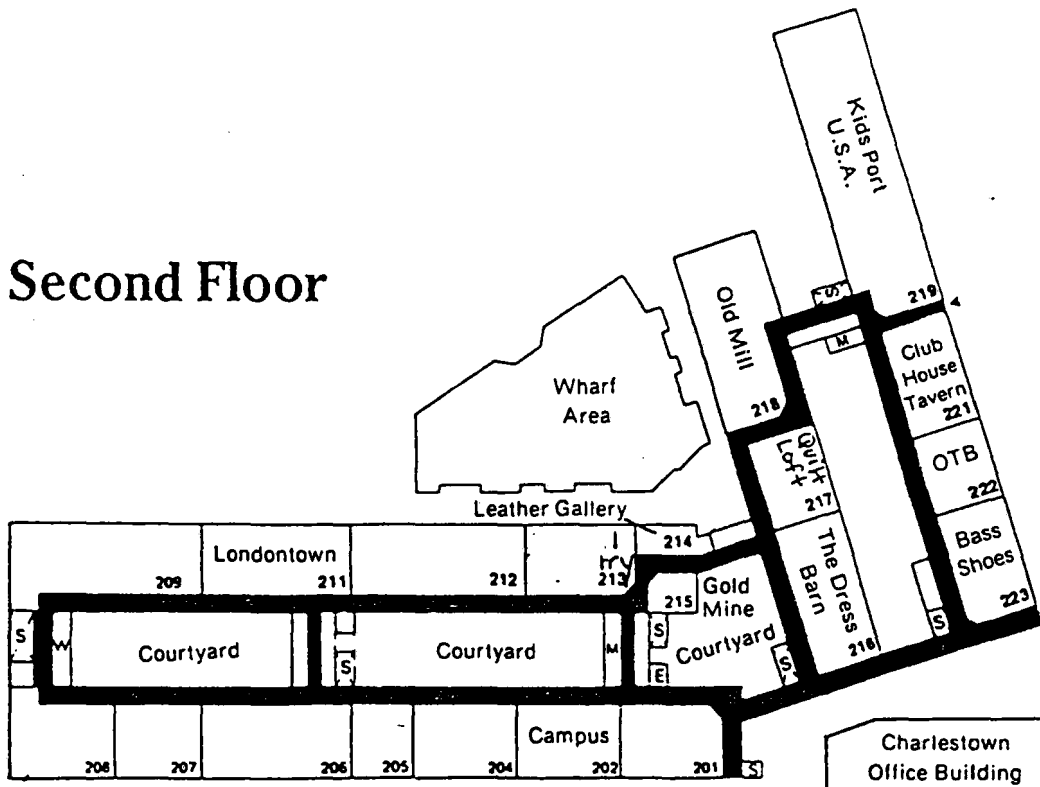
- 1 - Fun Foods
- 2 - Pizza Factory

CHARLIE G'S  
MATERNITY MAGIC

FUN FOODS  
SUGARMILL CANDIES  
PIZZA FACTORY

GENTLEMEN'S WEAR-HOUSE  
INFORMATION CENTER  
LESLIE FAY

### Second Floor



LONDON TOWN  
WORLD BAZAAR  
LEATHER GALLERY  
GOLD MINE  
COMMUNITY ROOM

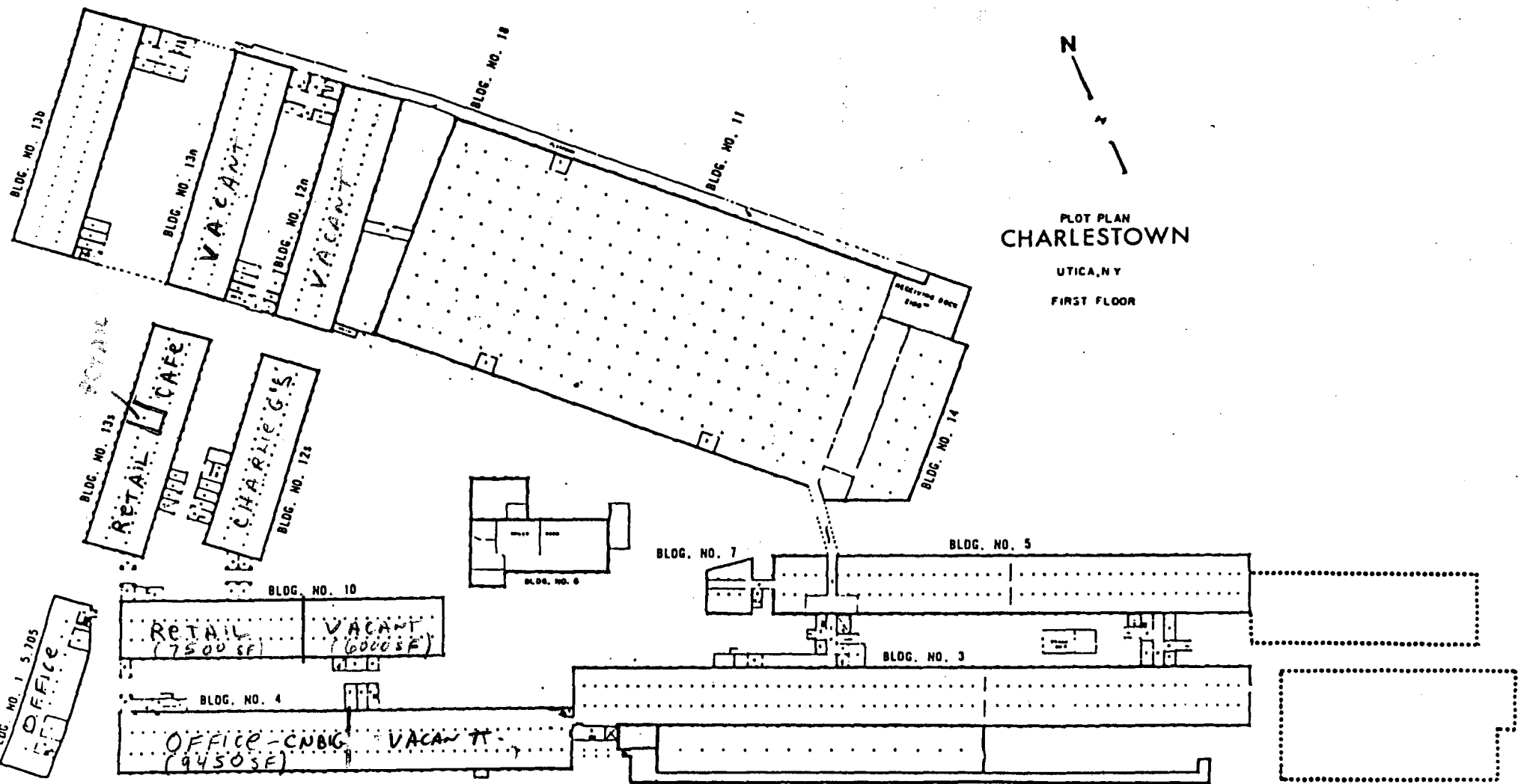
EPIC COMPUTER CENTER  
QUILT LOFT  
CAMPUS  
FLORAL TAPESTRY  
THE DRESS BARN

OLD MILL  
BASS SHOES  
OTB  
CLUB HOUSE TAVERN  
KIDS PORT U.S.A

alrtd

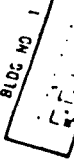


PLOT PLAN  
CHARLESTOWN  
UTICA, NY  
FIRST FLOOR





27



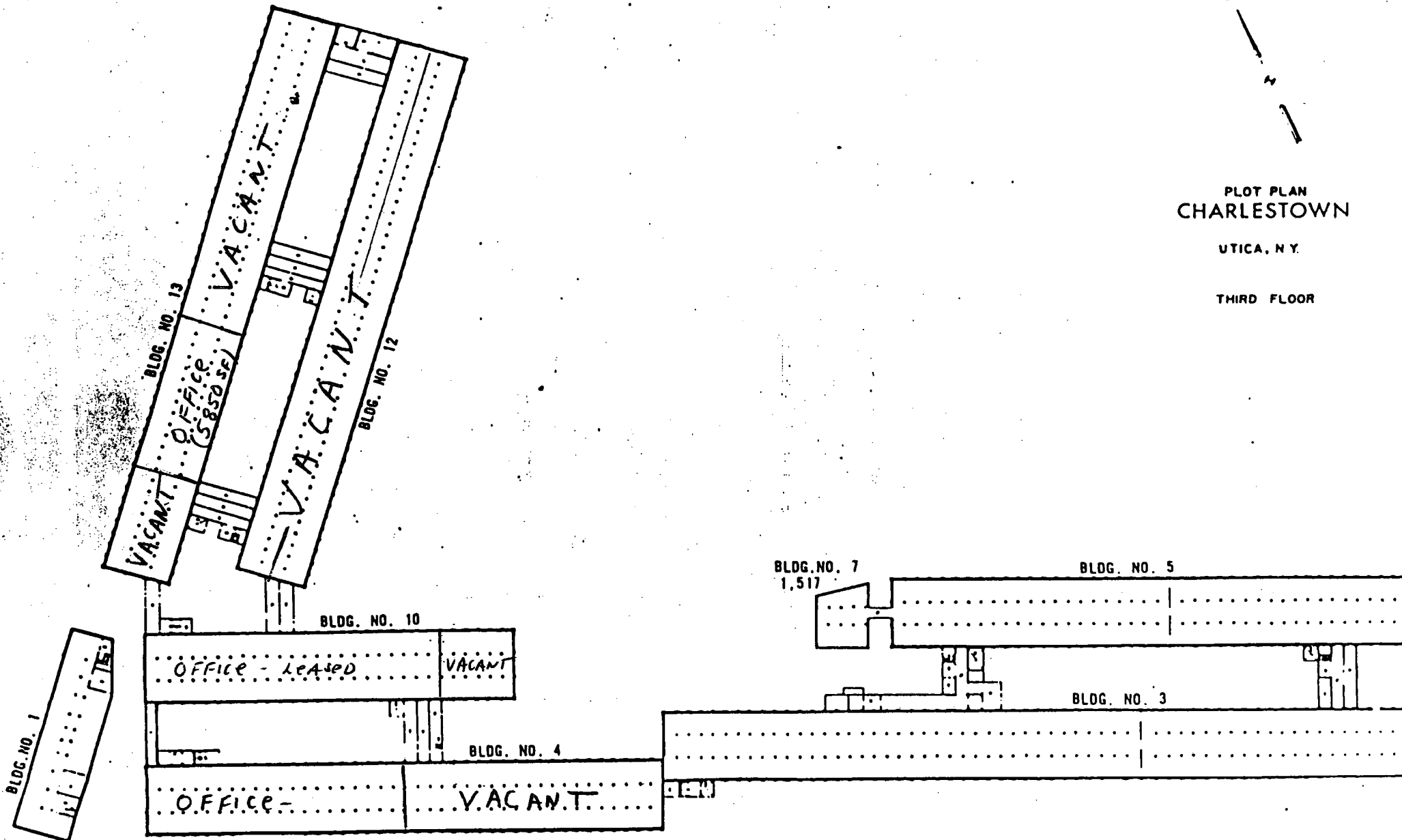
9/17/90



Plot Plan  
Charlestown

Utica, N.Y.

Third Floor



9/17/90

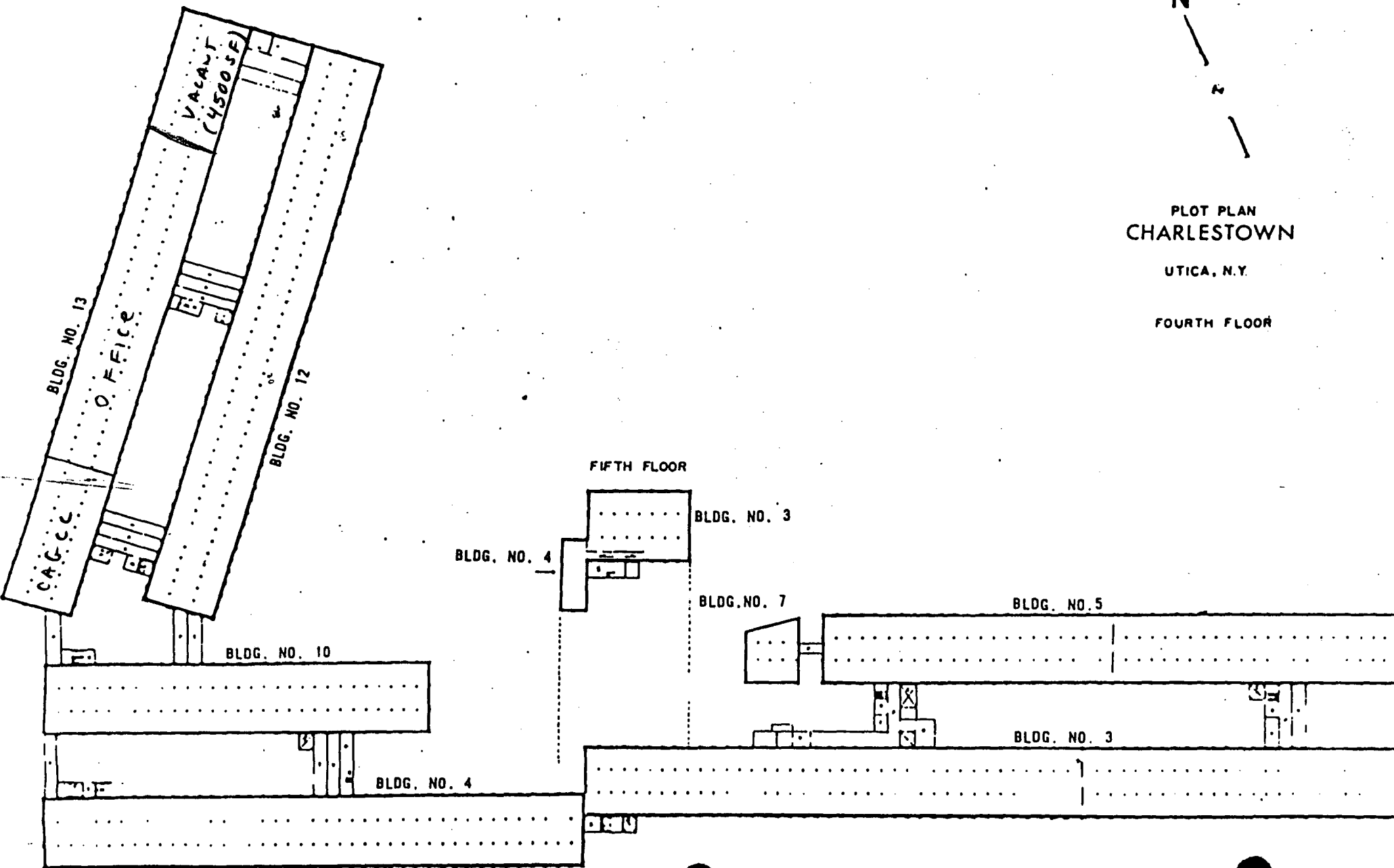


PLOT PLAN  
CHARLESTOWN

UTICA, N.Y.

FOURTH FLOOR

FIFTH FLOOR



3100 sf

4600 sf

BLDG. NO. 18

PLATFORM

BLDG. NO. 11  
79,200<sup>sq</sup>

BLDG. NO. 11 annex 4,188<sup>sq</sup>

RECEIVING DOCK  
2100<sup>sq</sup>

BLDG NO 14 7512<sup>sq</sup>

GAETANO ASSOCIATES  
CHARELSTOWN MALL  
LEASED AREA SUMMARY  
SEPTEMBER 17, 1990

<u>Bldg. #</u>	<u>Retail Leased</u>	<u>Office Leased</u>	<u>Other</u>	<u>Unoccupied</u>	<u>Total</u>
<u>Bldg. #4</u>					
1st. Floor	-	9,450	9450	9,450	18,900
2nd. Floor	9,620	-	from above	9,280	18,900
3rd. Floor	-	9,450		9,450	18,900
4th. Floor	-	-		18,900	18,900
<u>Bldg. #10</u>					
1st. Floor	7,500	-		6,000	13,500
2nd. Floor	13,500	-		-	13,500
3rd. Floor	-	10,800		2,700	13,500
4th. Floor	-	-		13,500	13,500
<u>Bldg. #12</u>					
1st. Floor	-	-	9,000 <sup>1</sup>	9,900	18,900
2nd. Floor	19,225	-		1,475	20,700
3rd. Floor	-	-		20,700	20,700
4th. Floor	-	-		20,700	20,700
<u>Bldg. #13</u>					
1st. Floor	6,000	-	3,900 <sup>2</sup>	10,350	20,250
2nd. Floor	11,350	2,215	1,845 <sup>3</sup>	6,640	22,050
3rd. Floor	-	5,850		16,200	22,050
4th. Floor	-	12,150	5,400 <sup>4</sup>	4,500	22,050
Totals (Mall Area)	<u>67,195</u>	<u>49,915</u>	<u>20,145</u>	<u>159,745</u>	<u>297,000</u>
Bldg. #1	-	-	17,250 <sup>5</sup>	-	<u>17,250</u>
Bldg. #11	-	-	32,000 <sup>6</sup>	-	<u>32,000</u>

Footnotes:

1. Occupied by WBC Restaurant Corp., d/b/a Charlie G's.
2. Effective 9/17/90, operated by WBC Restaurant Corp. as Snack Bar.
3. Occupied by insured Gaetano Associates - Main Office.
4. Occupied by insured, Charles A. Gaetano Construction Corp.
5. Space occupied by Riverside School of Aeronautics, who has assumed primary liability for this space.
6. Previously included in Special Liability Policy #1CG125141159, Classification - 311 Turner Street; Vacant Bldgs. - Factories, Code No. 68604; effective 9/17/90 - occupied by Riverside School of Aeronautics as classrooms. As with Footnote 5, they will assume the primary liability insurance for this area.



311 Turner Street • Utica, NY 13501 • Phone 315/733-4611 • FAX 315/733-8287

September 20, 1990

Robert J. Hanafin, Inc.  
204 Washington Avenue  
Endicott, NY 13760

ATTN: Amity Kokochak

Dear Amity:

Please note enclosed updated Leased Area Analysis for CharlesTown Mall effective September 17, 1990. Please issue appropriate endorsements to reflect these changes.

A review of the 1989-90 General Liability Policy for CharlesTown Policy No. 1CG117077323 indicates an overcharge of 9,000 S.F. for Code No. 67633, for Charlie G's. Please issue credit for \$1,528. Also, please issue appropriate credit of \$2,229 for the current year policy, Policy No. 1CG125141148.

As indicated by Footnote No. 5, Building No. 1 is entirely occupied, effective Sept. 17, 1990, by the Riverside School of Aeronautics. Per lease agreement, they have assumed primary liability for their leased premises. As discussed, we will not add this location to present USF&G policy. Please remove present Classification No. 61211, 10,000 S.F., 311 Turner Street, Utica, NY from current General Liability Policy No. 1MP11888125700.

In addition, please note Footnote No. 6, indicating the occupancy of former vacant areas by the Riverside School of Aeronautics. Please update the current Special Liability Policy No. 1CG125141159 to reflect this 32,000 S.F. occupancy. As indicated in the footnote, Riverside will carry the primary liability insurance for this area. We will not add this 32,000 S.F. to our General Liability Policies.

Very truly yours,

CHARLES A. GAETANO CONSTRUCTION CORPORATION

John N. Kinney  
Controller  
cc: Richard Wennberg



GAETANO ASSOCIATES  
CHARLESTOWN MALL  
LEASED AREA SUMMARY  
MAY 1, 1991

<sup>673</sup> Bldg. #4	Retail Leased	Office Leased	Other	Unoccupied	Total	
1st. Fl.	-	9,450	-	<del>9,450</del>	<del>18,900</del>	0
2nd. Fl.	6,600	-	9,280 <sup>7</sup>	3,020	<del>18,900</del>	6,600
3rd. Fl.	-	9,450 x 50%	-	9,450	<del>18,900</del>	4,725
4th. Fl.	-	-	-	<del>18,900</del>	<del>18,900</del>	0
Bldg. #10						
1st. Fl.	-	-	-	<del>13,500</del>	<del>13,500</del>	0
2nd. Fl.	6,590	10,800	-	6,910	13,500	6,600
3rd. Fl.	-	10,800	-	2,700	<del>13,500</del>	7,000
4th. Fl.	-	-	-	13,500	13,500	0
Bldg. #12						
1st. Fl.	-	-	9,000 <sup>1</sup>	9,900	18,900	0
2nd. Fl.	-	-	-	20,700	20,700	0
3rd. Fl.	-	-	-	20,700	20,700	0
4th. Fl.	-	-	-	20,700	20,700	0
Bldg. #13						
1st. Fl.	6,000	-	3,900 <sup>2</sup>	10,350	20,250	5,000
2nd. Fl.	-	4,015	1,845 <sup>3</sup>	16,190	22,050	10,000
3rd. Fl.	-	9,900	-	12,150	22,050	2,500
4th. Fl.	-	12,150	5,400 <sup>4</sup>	4,500	22,050	11,275
Totals (Mall Area)	19,190	55,765	29,425	192,620	297,000	
Bldg. # 1	-	-	17,250 <sup>5</sup>	-	17,250	
Bldg. #11	-	-	32,000 <sup>6</sup>	-	32,000	

Footnotes:

1. Occupied by WBC Restaurant Corp., d/b/a Charlie G's.
2. Effective 9/17/90, operated by WBC Restaurant Corp as Snack Bar.
3. Occupied by insured Gaetano Associates - Main Office.
4. Occupied by insured, Charles A. Gaetano Construction Corp.
5. Space occupied by Riverside School of Aeronautics, who has assumed primary liability for this space.
6. Previously included in Special Liability Policy #1CG125141159, Classification - 311 Turner Street; Vacant Bldgs. - Factories, Code No. 68604; effective 9/17/90 - occupied by Riverside School of Aeronautics as classrooms. As with Footnote 5, they will assume the primary liability insurance for this area.
7. Occupied by Trans Canada Pipelines who has assumed primary liability for this area.

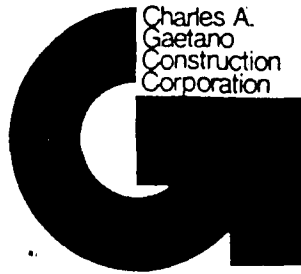
GAETANO ASSOCIATES  
CHARLESTOWN MALL  
LEASED AREA SUMMARY  
MAY 1, 1991

<sup>OTB</sup> Bldg. #4	Retail Leased	Office Leased	Other	Unoccupied	Total
1st. Fl.	-	9,450	-	9,450	18,900
2nd. Fl.	6,600	-	9,280 <sup>7</sup>	3,020	18,900
3rd. Fl.	-	9,450	-	9,450	18,900
4th. Fl.	-	-	-	18,900	18,900
<b>Bldg. #10</b>					
1st. Fl.	-	-	-	13,500	13,500
2nd. Fl.	6,590	-	-	6,910	13,500
3rd. Fl.	-	10,800	-	2,700	13,500
4th Fl.	-	-	-	13,500	13,500
<b>Bldg. #12</b>					
1st. Fl.	-	-	9,000 <sup>1</sup>	9,900	18,900
2nd. Fl.	-	-	-	20,700	20,700
3rd. Fl.	-	-	-	20,700	20,700
4th. Fl.	-	-	-	20,700	20,700
<b>Bldg. #13</b>					
1st. Fl.	6,000	-	3,900 <sup>2</sup>	10,350	20,250
2nd. Fl.	-	4,015	1,845 <sup>3</sup>	16,190	22,050
3rd. Fl.	-	9,900	-	12,150	22,050
4th. Fl.	-	12,150	5,400 <sup>4</sup>	4,500	22,050
<b>Totals (Mall Area)</b>	<b>19,190</b>	<b>55,765</b>	<b>29,425</b>	<b>192,620</b>	<b>297,000</b>
Bldg. # 1	-	-	17,250 <sup>5</sup>	-	17,250
Bldg. #11	-	-	32,000 <sup>6</sup>	-	32,000

**Footnotes:**

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2. Effective 9/17/90, operated by WBC Restaurant Corp as Snack Bar.
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7. Occupied by Trans Canada Pipelines who has assumed primary liability for this area.





Return TC  
Leased Area  
Folder

311 Turner Street • Utica, NY 13501 • Phone 315/733-4611 • FAX 315/733-8287

August 12, 1991

Robert J. Hanafin, Inc.  
204 Washington Avenue  
Endicott, NY 13760

ATTN: Amity

RE: Charlestown Mall  
Leased Area Analysis  
May 1, 1991

Dear Amity:

Please note the following area changes (see attached also),  
effective May 1, 1991.

<u>Category</u>	<u>Area @ 4-1-91</u>	<u>Area @ 5-1-91</u>
Occupied Mall Area	32,182	19,190
Unoccupied Mall Area	181,428	192,620
Office Space	53,965	55,765
Other (Occupied by Insured; Insured by Others)	<u>29,425</u>	<u>29,425</u>
Total Area	297,000	297,000

Please issue the appropriate endorsements to reflect the above  
changes.

Very truly yours,

CHARLES A. GAETANO CONSTRUCTION CORPORATION

*John N. Kinney*

John N. Kinney  
Controller

JNK:bh  
Enc.

cc: Richard Wennberg



**GAETANO ASSOCIATES**  
**d/b/a Charlestown Business Complex**

**Leased Area Analysis**  
**April 1, 1994**

<u>Bldg #</u>	<u>Total Area</u>	<u>Area Leased</u>	<u>Unoccupied Area</u>	<u>Other</u>	<u>Tenants</u>
#4-1st Fl.	18,900	3,185	15,715		Therma Guard, Dark Light Print Shoppe
#4-2nd Fl.	18,900	8,000	10,900		United Credit OTB
#4-3rd Fl.	18,900	10,800	8,100		ILEC Non Stop Networks In Site
#4-4th Fl.	18,900		18,900		
<u>Total #4</u>	<u>75,600</u>	<u>21,985</u>	<u>53,615</u>		
#10-1st Fl.	13,500	2,000	11,500		Utica Elevator
#10-2nd Fl.	13,500	7,500	6,000		Business Institute N. Country Books Advanced Marketing
#10-3rd Fl.	13,500	8,300	5,200		Savoy, Hewison, Reon, Photographics
#10-4th Fl.	13,500		13,500		
<u>Total #10</u>	<u>54,000</u>	<u>17,800</u>	<u>36,200</u>		
#12-1st Fl.	18,900		18,900		Charlie G's (8,500 sf) InActive
#12-2nd Fl.	20,700		20,700		
#12-3rd Fl.	20,700		20,700		
#12-4th Fl.	20,700		18,900	1,800	1,800 sf occupied by Insured: Gaetano Constr.
<u>Total #12</u>	<u>81,000</u>		<u>79,200</u>	<u>1,800</u>	

@ 4/11/94

<u>Bldg</u>	<u>Total Area</u>	<u>Area Leased</u>	<u>Unoccupied Area</u>	<u>Other</u>	<u>Tenant</u>
#13-1st Fl.	20,250		16,250	4,000	LuLu's Cafe (Insured) 4,000 sf
#13-2nd Fl.	22,050	4,100	16,105	1,845	Other-Charles- town Office (Insured)
#13-3rd Fl.	22,050	10,000	12,050		CNY Services Iroquois Gas Jet Net
#13-4th Fl.	22,050	8,675	8,375	5,000	5,000 sf Occupied by Insured - Gaetano Const. x
					Solid Waste American Lung Centron
<hr/>					
Total #13	86,400	22,775	52,780	10,845	
<hr/>					
Bldg #1	17,250		17,250		
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Bldg #11	93,335		93,335		Portion used for storage of Autos, Boats etc.
<hr/>					
Total All	407,585	62,560	332,380	12,645	

(Leases)

## GAETANO ASSOCIATES

Vacant Areas - Undeveloped  
April 1, 1994

Bldg #                      Vacant Area

#3 - 1st Fl.	38,062
2nd Fl.	27,900
3rd Fl.	27,900
4th Fl.	<u>27,900</u>

Note: Major sections of Bldg #3 have collapsed. These areas are completely enclosed by a chain link fence. 121,762 s.f. represents total floor area prior to collapse.

Total Bldg #3	121,762
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#5 - 1 - 4 Fls.	19,800 per floor
	<u>x 4</u>

Total Bldg #5	79,200
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Bldg #5 - Annex	11,400
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Shed #4	17,255
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Bldg #7	6,068 - 4 Floors - 1,517 sf each
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<u>Bldg #14</u>	<u>7,518 - 1 Floor only</u>
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Total vacant	243,203 s.f.
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(VACANT)

GAETANO ASSOCIATES  
d/b/a Charlestown Business Complex

Leased Area Analysis

January 31, 1996

<u>Building:</u>	<u>Total Area:</u>	<u>Area Leased:</u>	<u>Unoccupied Area:</u>	<u>Other:</u>
4 - 1st floor	18, .900	1,745	17,155	
4 - 2nd floor	18,900	18,900	-	
4 - 3rd floor	18,900	-	18,900	
4 - 4th floor	<u>18,900</u>	<u>-</u>	<u>18,900</u>	<u>          </u>
<b>Total #4</b>	<b>75,600</b>	<b>20,645</b>	<b>54,955</b>	
10 - 1st floor	13,500	1,945	11,555	
10 - 2nd floor	13,500	-	13,500	
10 - 3rd floor	13,500	-	13,500	
10 - 4th floor	<u>13,500</u>	<u>-</u>	<u>13,500</u>	<u>          </u>
<b>Total #10</b>	<b>54,000</b>	<b>1,945</b>	<b>52,055</b>	
12 - 1st floor	18,900	-	10,400	8,500
Other - WBC Rest Corp - Inactive				
12 - 2nd floor	20,700	-	19,700	1,000
Other - Storage				
12 - 3rd floor	20,700	-	15,840	4,860
Other - Storage, C.P. & Business Services				
12 - 4th floor	<u>20,700</u>	<u>          </u>	<u>18,900</u>	<u>1,800</u>
Other - Occupies by Gaetano Construction				
<b>Total #12</b>	<b>81,000</b>	<b>-</b>	<b>64,840</b>	<b>16,160</b>

@ 1/31/90

<u>Building:</u>	<u>Total Area:</u>	<u>Area Leased:</u>	<u>Unoccupied Area:</u>	<u>Other:</u>
13 - 1st floor	20,250	5,620	5,000	4,630
	Other - Occupied by insured		snack bar	
	Other - Carpet Mill Storage			5,000
13 - 2nd floor	22,050	6,415	13,790	1,845
	Other - Occupied by insured		Charlestown Office	
13 - 3rd floor	22,050	9,000	13,050	
13 - 4th floor	<u>22,050</u>	<u>9,925</u>	<u>7,625</u>	<u>4,500</u>
	Other - Occupied by insured		Gaetano Construction	
Total #13:	86,400	30,960	39,465	15,975
Total #1:	17,250	3,810	13,440	
Total #18:	7,700	4,000	3,700	
Total #11:	<u>79,200</u>	<u>2,800</u>	<u>10,000</u>	<u>66,400*</u>
Total All	401,150 sf	64,160 sf	238,455 sf	98,535

\* Storage - Autos, Trucks, Boats, R.V's

(LEASES)

GAETANO ASSOCIATES

Vacant Areas - Undeveloped

January 31, 1996

<u>Building #:</u>	<u>Vacant Area:</u>
#3 - 1st floor	38,062
2nd floor	27,900
3rd floor	27,900
4th floor	<u>27,900</u>
Total Bldg #3	121,762
 #5 - 1st - 4th floor	 19,800/flr
	<u>x 4 flrs</u>
Total Bldg #5	79,200
 #5 - Annex	 11,400
#4 - Shed	17,255
 #7 - 1st - 4th floor	 1,517/flr
	<u>x 4 flrs</u>
Total Bldg #7	6,068
 #14 - 1st floor	 <u>7,518</u>
Total Vacant	243,203 sf

Note: Major sections of Building #3 have collapsed. These areas are completely enclosed by a chain link fence. 121,762 sf represents total floor area prior to collapse.

(VACANT)

# GAETANO ASSOCIATES D/B/A CHARLESTOWN BUSINESS COMPLEX

## LEASED AREA ANALYSIS

4-1-97

### **BUILDING #4**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	1,745	17,155
2 <sup>nd</sup>	18,900	14,385	4,515
3 <sup>rd</sup>	18,900	-	18,900
4 <sup>th</sup>	18,900	-	18,900
<b>Total</b>	<b>75,600</b>	<b>16,130</b>	<b>59,470</b>

### **BUILDING #10**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	13,500	1,945	11,555
2 <sup>nd</sup>	13,500	-	13,500
3 <sup>rd</sup>	13,500	-	13,500
4 <sup>th</sup>	13,500	-	13,500
<b>Total</b>	<b>54,000</b>	<b>1,945</b>	<b>52,055</b>

### **BUILDING #12**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	-	18,900
2 <sup>nd</sup>	20,700	1,000	19,700
3 <sup>rd</sup>	20,700	1,500	19,200
4 <sup>th</sup>	20,700	1,800	18,900
<b>Total</b>	<b>81,000</b>	<b>4,300</b>	<b>76,700</b>

### **BUILDING #13**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	20,250	16,620	3,630
2 <sup>nd</sup>	22,050	8,260	13,790
3 <sup>rd</sup>	22,050	12,000	10,050
4 <sup>th</sup>	22,050	14,425	7,625
<b>Total</b>	<b>86,400</b>	<b>51,305</b>	<b>35,095</b>



@ 4/1/97

TOTAL AREA:	AREA LEASED:	UNOCCUPIED:
TOTAL #1: 17,250	2,860	14,390
TOTAL #18: 7,700	3,000	4,700
TOTAL #11: 79,200	2,800	76,400**
<b>TOTAL ALL: 401,150 SF</b>	<b>82,340 SF</b>	<b>318,810 SF</b>

\*\* Storage – Autos, Trucks, Boats, RV's

(AREAS)

# GAETANO ASSOCIATES D/B/A CHARLESTOWN BUSINESS COMPLEX

## LEASED AREA ANALYSIS

4-1-98

### **BUILDING #4**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	1,745	17,155
2 <sup>nd</sup>	18,900	9,785	9,115
3 <sup>rd</sup>	18,900	-	18,900
4 <sup>th</sup>	18,900	-	18,900
<b>Total</b>	<b>75,600</b>	<b>11,530</b>	<b>64,070</b>

### **BUILDING #10**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	13,500	1,945	11,555
2 <sup>nd</sup>	13,500	-	13,500
3 <sup>rd</sup>	13,500	-	13,500
4 <sup>th</sup>	13,500	-	13,500
<b>Total</b>	<b>54,000</b>	<b>1,945</b>	<b>52,055</b>

### **BUILDING #12**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	-	18,900
2 <sup>nd</sup>	20,700	1,000	19,700
3 <sup>rd</sup>	20,700	1,500	19,200
4 <sup>th</sup>	20,700	1,800	18,900
<b>Total</b>	<b>81,000</b>	<b>4,300</b>	<b>76,700</b>

### **BUILDING #13**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	20,250	16,620	3,630
2 <sup>nd</sup>	22,050	8,260	13,790
3 <sup>rd</sup>	22,050	12,000	10,050
4 <sup>th</sup>	22,050	9,575	12,475
<b>Total</b>	<b>86,400</b>	<b>46,455</b>	<b>39,945</b>

@ 4/11/18

TOTAL AREA:	AREA LEASED:	UNOCCUPIED:
TOTAL #1: 17,250	2,880	14,370
TOTAL #18: 7,700	2,600	5,100
TOTAL #11: 79,200	2,800	76,400**
<b>TOTAL ALL: 401,150 SF</b>	<b>72,510 SF</b>	<b>328,640 SF</b>

\*\* Storage – Autos, Trucks, Boats, RV's

**Parking Areas**

Turner Street Side	185' x 190' =	35150 SF
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Bleecker Street Side (OTB)	350 x 50 =	<u>17500</u> SF
	Total Pricing Area	52650 SF

(AREAS)

# GAETANO ASSOCIATES D/B/A CHARLESTOWN BUSINESS COMPLEX

## LEASED AREA ANALYSIS

3-20-01

### **BUILDING #4**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	1,025	17,875
2 <sup>nd</sup>	18,900	11,285	7,615
3 <sup>rd</sup>	18,900	-	18,900
4 <sup>th</sup>	18,900	-	18,900
<b>Total</b>	<b>75,600</b>	<b>12,310</b>	<b>63,290</b>

### **BUILDING #10**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	13,500	1,945	11,555
2 <sup>nd</sup>	13,500	-	13,500
3 <sup>rd</sup>	13,500	-	13,500
4 <sup>th</sup>	13,500	-	13,500
<b>Total</b>	<b>54,000</b>	<b>1,945</b>	<b>52,055</b>

### **BUILDING #12**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	-	18,900
2 <sup>nd</sup>	20,700	1,000	19,700
3 <sup>rd</sup>	20,700	1,500	19,200
4 <sup>th</sup>	20,700	1,800	18,900
<b>Total</b>	<b>81,000</b>	<b>4,300</b>	<b>76,700</b>

### **BUILDING #13**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	20,250	6,670	13,580
2 <sup>nd</sup>	22,050	6,830	15,220
3 <sup>rd</sup>	22,050	6,000	16,050
4 <sup>th</sup>	22,050	12,125	9,925
<b>Total</b>	<b>86,400</b>	<b>31,625</b>	<b>54,775</b>

**GAETANO ASSOCIATES  
LEASED AREA ANALYSIS  
3-20-01**

	TOTAL AREA:	AREA LEASED:	UNOCCUPIED:
TOTAL #1:	17,250	2,250	15,000
TOTAL #18:	7,700	0	7,700
TOTAL #11:	79,200	0	79,200**
OTHER: (MIDSTATE STEEL)	14,000	14,000	0
<b>TOTAL ALL BLDGS:</b> (4, 10, 12, 13, 1, 18 & 11)	<b>415,150 SF</b>	<b>66,430 SF</b>	<b>348,720 SF</b>
** Storage – Autos, Trucks, Boats, RV's			

**Parking Areas**

Turner Street Side	185' x 190' =	35150 SF
Bleecker Street Side (OTB)	350 x 50 =	<u>17500</u> SF
	Total Pricing Area	52650 SF

(Areas1)

**GAETANO ASSOCIATES  
D/B/A CHARLESTOWN BUSINESS COMPLEX**

**LEASED AREA ANALYSIS**

**04-10-02**

**BUILDING #4**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	1,025	17,875
2 <sup>nd</sup>	18,900	11,285	7,615
3 <sup>rd</sup>	18,900	-	18,900
4 <sup>th</sup>	18,900	-	18,900
<b>Total</b>	<b>75,600</b>	<b>12,310</b>	<b>63,290</b>

**BUILDING #10**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	13,500	0	13,500
2 <sup>nd</sup>	13,500	-	13,500
3 <sup>rd</sup>	13,500	-	13,500
4 <sup>th</sup>	13,500	-	13,500
<b>Total</b>	<b>54,000</b>	<b>0</b>	<b>54,000</b>

**BUILDING #12**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	-	18,900
2 <sup>nd</sup>	20,700	1,000	19,700
3 <sup>rd</sup>	20,700	11,500	9,200
4 <sup>th</sup>	20,700	1,800	18,900
<b>Total</b>	<b>81,000</b>	<b>14,300</b>	<b>66,700</b>

**BUILDING #13**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	20,250	1,000	19,250
2 <sup>nd</sup>	22,050	9,330	12,720
3 <sup>rd</sup>	22,050	9,000	13,050
4 <sup>th</sup>	22,050	12,125	9,925
<b>Total</b>	<b>86,400</b>	<b>31,455</b>	<b>54,945</b>

**GAETANO ASSOCIATES  
LEASED AREA ANALYSIS  
4-10-02**

	TOTAL AREA:	AREA RENTED:	UNOCCUPIED:
TOTAL #1:	17,250	1,850	15,400
TOTAL #18:	7,700	0	7,700
TOTAL #11:	79,200	40,000**	39,200
OTHER: (MIDSTATE STEEL)	14,000	14,000	0
<b>TOTAL ALL BLDGS:</b> (4, 10, 12, 13, 1, 18 & 11)	<b>415,150 SF</b>	<b>113,915 SF</b>	<b>301,235 SF</b>

\*\* Storage – Autos, Trucks, Boats, RV's

**Parking Areas**

Turner Street Side	185' x 190' =	35150 SF
Bleecker Street Side (OTB)	350 x 50 =	<u>17500</u> SF
	Total Pricing Area	52650 SF

**GAETANO ASSOCIATES  
D/B/A CHARLESTOWN BUSINESS COMPLEX**

**LEASED AREA ANALYSIS  
05-01-03**

**BUILDING #4**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	1,025	17,875
2 <sup>nd</sup>	18,900	11,285	7,615
3 <sup>rd</sup>	18,900	-	18,900
4 <sup>th</sup>	18,900	-	18,900
<b>Total</b>	<b>75,600 SF</b>	<b>12,310 SF</b>	<b>63,290 SF</b>

**BUILDING #10**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	13,500	0	13,500
2 <sup>nd</sup>	13,500	-	13,500
3 <sup>rd</sup>	13,500	-	13,500
4 <sup>th</sup>	13,500	-	13,500
<b>Total</b>	<b>54,000 SF</b>	<b>0 SF</b>	<b>54,000 SF</b>

**BUILDING #12**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	-	18,900
2 <sup>nd</sup>	20,700	1,000	19,700
3 <sup>rd</sup>	20,700	11,500	9,200
4 <sup>th</sup>	20,700	1,800	18,900
<b>Total</b>	<b>81,000 SF</b>	<b>14,300 SF</b>	<b>66,700 SF</b>

**BUILDING #13**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	20,250	1,000	19,250
2 <sup>nd</sup>	22,050	9,330	12,720
3 <sup>rd</sup>	22,050	9,000	13,050
4 <sup>th</sup>	22,050	12,125	9,925
<b>Total</b>	<b>86,400 SF</b>	<b>37,755 SF</b>	<b>48,645 SF</b>



**GAETANO ASSOCIATES  
LEASED AREA ANALYSIS  
5/1/03**

	TOTAL AREA:	AREA RENTED:	UNOCCUPIED:
TOTAL #1:	17,250	0	17,250
TOTAL #18:	7,700	0	7,700
TOTAL #11:	79,200	40,000**	39,200
OTHER: (MIDSTATE STEEL)	14,000	14,000	0
<b>TOTAL ALL BLDGS:</b> (4, 10, 12, 13, 1, 18 & 11)	<b>415,150 SF</b>	<b>118,365 SF</b>	<b>296,785 SF</b>

\*\* Storage – Autos, Trucks, Boats, RV's

**Parking Areas**

Turner Street Side	185' x 190' =	35150 SF
Bleecker Street Side (OTB)	350 x 50 =	<u>17500</u> SF
	Total Pricing Area	52650 SF

# GAETANO ASSOCIATES D/B/A CHARLESTOWN BUSINESS COMPLEX

## LEASED AREA ANALYSIS

05-01-04

### **BUILDING #4**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	1,025	17,875
2 <sup>nd</sup>	18,900	6,100	12,800
3 <sup>rd</sup>	18,900	-	18,900
4 <sup>th</sup>	18,900	-	18,900
<b>Total</b>	<b>75,600 SF</b>	<b>7,125 SF</b>	<b>68,475 SF</b>

### **BUILDING #10**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	13,500	0	13,500
2 <sup>nd</sup>	13,500	-	13,500
3 <sup>rd</sup>	13,500	-	13,500
4 <sup>th</sup>	13,500	-	13,500
<b>Total</b>	<b>54,000 SF</b>	<b>0 SF</b>	<b>54,000 SF</b>

### **BUILDING #12**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	-	18,900
2 <sup>nd</sup>	20,700	1,000	19,700
3 <sup>rd</sup>	20,700	11,500	9,200
4 <sup>th</sup>	20,700	1,800	18,900
<b>Total</b>	<b>81,000 SF</b>	<b>14,300 SF</b>	<b>66,700 SF</b>

### **BUILDING #13**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	20,250	1,000	19,250
2 <sup>nd</sup>	22,050	10,680	11,370
3 <sup>rd</sup>	22,050	12,000	10,050
4 <sup>th</sup>	22,050	13,225	8,825
<b>Total</b>	<b>86,400 SF</b>	<b>36,905 SF</b>	<b>49,495 SF</b>

**GAETANO ASSOCIATES  
LEASED AREA ANALYSIS  
5/1/04**

	TOTAL AREA:	AREA RENTED:	UNOCCUPIED:
TOTAL #1:	17,250	0	17,250
TOTAL #18:	7,700	0	7,700
TOTAL #11:	79,200	40,000**	39,200
OTHER: (MIDSTATE STEEL)	14,000	14,000	0
<b>TOTAL ALL BLDGS:</b> (4, 10, 12, 13, 1, 18 & 11)	<b>415,150 SF</b>	<b>112,330 SF</b>	<b>302,820 SF</b>

\*\* Storage – Autos, Trucks, Boats, RV's

**Parking Areas**

Turner Street Side	185' x 190' =	35150 SF
Bleecker Street Side (OTB)	350 x 50 =	<u>17500</u> SF
	Total Pricing Area	52650 SF

# GAETANO ASSOCIATES D/B/A CHARLESTOWN BUSINESS COMPLEX

## LEASED AREA ANALYSIS

### **BUILDING #4**

**05/01/05**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	1,025	17,875
2 <sup>nd</sup>	18,900	10,000	8,900
3 <sup>rd</sup>	18,900	-	18,900
4 <sup>th</sup>	18,900	-	18,900
<b>Total</b>	<b>75,600 SF</b>	<b>11,025</b>	<b>64,575 SF</b>

### **BUILDING #10**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	13,500	0	13,500
2 <sup>nd</sup>	13,500	-	13,500
3 <sup>rd</sup>	13,500	-	13,500
4 <sup>th</sup>	13,500	-	13,500
<b>Total</b>	<b>54,000 SF</b>	<b>0 SF</b>	<b>54,000 SF</b>

### **BUILDING #12**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	18,900	10,000	8,900
2 <sup>nd</sup>	20,700	1,000	19,700
3 <sup>rd</sup>	20,700	11,500	9,200
4 <sup>th</sup>	20,700	1,800	18,900
<b>Total</b>	<b>81,000 SF</b>	<b>24,300 SF</b>	<b>56,700 SF</b>

### **BUILDING #13**

Floor #	Total Area:	Area Leased:	Unoccupied Area:
1 <sup>st</sup>	20,250	10,000	10,250
2 <sup>nd</sup>	22,050	7,995	14,055
3 <sup>rd</sup>	22,050	10,200	11,850
4 <sup>th</sup>	22,050	15,575	6,475
<b>Total</b>	<b>86,400 SF</b>	<b>43,770 SF</b>	<b>42,630 SF</b>

**GAETANO ASSOCIATES  
LEASED AREA ANALYSIS  
05/01/05**

	<u>TOTAL AREA:</u>	<u>AREA RENTED:</u>	<u>UNOCCUPIED:</u>
TOTAL #1:	17,250	0	17250
TOTAL #18:	7,700	1000	6700
TOTAL #11:	79,200	48000	31200
OTHER: (MIDSTATE STEEL):	14,000	14000	0
 TOTAL ALL BUILDINGS: (4, 10, 12, 13, 1, 18 & 11)	 <b>415,150 SF</b>	 <b>142,095 SF</b>	 <b>273,055 SF</b>

**Parking Areas**

Turner Street Side	185' x 190'	35,150 SF
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Bleecker Street Side	350' x 50'	17,500 SF
Total Pricing Area		52,650 SF

O5CTOW NAREA

# ELECTRONIC RECORD TARGET SHEET

<b>SITE NAME:</b>	CHARLESTOWN MALL SITE
-------------------	-----------------------

<b>CERCLIS ID:</b>	NYC200400513
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<b>SDMS DOC ID:</b>	284617
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<b>ALT. MEDIA TYPE:</b>	N/A
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<b>DOCUMENT FORMAT:</b>	PDF
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<b>NATIVE FORMAT LOCATION/FILENAME:</b>	N/A
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<b>COMMENTS:</b>	EXHIBIT 4 AND EXHIBIT 5 HAVE BEEN REMOVED BECAUSE IT CONTAINS CBI.
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# Exhibit 6

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Summary Abatement, Pursuant to Section 71-0301 of the Environmental Conservation Law of the State of New York (the "ECL"), of a Condition or Activity which Presents an Imminent Danger to the Health and Welfare of the People of the State of New York or Is Likely to Result in Irreversible or Irreparable Damage to Natural Resources, Maintained and Engaged in by:

COMMISSIONER'S  
SUMMARY ABATEMENT  
ORDER AND NOTICE  
OF HEARING

GAETANO ASSOCIATES,

Respondent

---

ORDER

I, HENRY G. WILLIAMS, Commissioner of Environmental Conservation, have found the following facts after investigation, and after having reviewed the attached affidavits:

1. Respondent Gaetano Associates ("Gaetano") is a limited partnership organized and existing under the laws of the State of New York.

2. Gaetano transacts business under the assumed business name of Charlestown Factory Outlet Center at a parcel consisting of approximately 10 acres situated partially within the City of Utica, County of Oneida, and partially within the Town of Frankfort, County of Herkimer, New York (the "Site"). (A map of the Site is attached and made a part of this Order as "Appendix A".)



3. On October 11, 1984, an Order on Consent was issued by the Commissioner of Environmental Conservation, which required that Gaetano and Sperry Corporation [Sperry Corporation is a corporation organized and existing under the laws of the State of Delaware] remove approximately one-hundred drums from the Site, of which approximately thirty-five contained hazardous or other industrial wastes (a copy of that Order is attached hereto as "Appendix B"). Those drums were located at the eastern end of the Site near the building marked as S-3 in Appendix A.

4. On December 18, 1984, personnel of the Department of Environmental Conservation (DEC) were present on the Site for the purpose of overseeing the remedial work being conducted pursuant to the Order on Consent of October 11, 1984. On that date, at approximately 11:00 a.m., Investigator Elwood Erickson of DEC's Bureau of Environmental Conservation Investigations (BECI) and Mark Millspaugh, Senior Sanitary Engineer for DEC's Division of Environmental Enforcement, observed several additional drums on a loading dock in close proximity to one of the buildings on the Site. Upon proceeding to the location of those drums, Investigator Erickson and Mark Millspaugh observed, through the window of the aforesaid building, an undetermined number of additional drums located therein and marked with labels as "flammable".

5. On December 19, 1984, Investigation Erickson and

Mark Millspaugh requested that personnel employed by Gaetano allow them to enter the building in which Investigator Erickson had previously observed drums on December 18, 1984; that request for admittance was denied. On December 21, 1984, Joseph Forti, Attorney in DEC's Division of Environmental Enforcement, wrote to Stuart Finer, Attorney for Gaetano, requesting that DEC personnel be granted admittance to the building in which Investigator Erickson had observed drums on December 18, 1984. On December 26, 1984, Mr. Finer indicated by telephone to Mr. Forti that DEC personnel would be allowed admittance to the buildings on the Site on January 3, 1985.

6. On January 3, 1985, Investigator Erickson, Investigator James Masuicca and Lt. Larry Johnson of BECI accompanied by Mark Millspaugh and Darryl Swerdowski of DEC's Division of Solid and Hazardous Waste were admitted to the buildings on the Site for the purpose of inspecting the conditions therein with respect to the presence of drums containing hazardous wastes. During the course of inspecting the buildings on the Site and observing the conditions therein, the aforesaid DEC personnel were accompanied by John Leshinski, Attorney for Sperry. Prior to the inspection, Mr. Stuart Finer, attorney for Gaetano, expressed his consent to the inspection.

7. In the course of the inspection of the buildings on the Site on January 3, 1985, Investigator Erickson and

Mark Millspaugh observed approximately 350 to 400 drums, ranging in size from 30 to 55 gallons, and an undetermined number of other containers within said buildings. A number of those drums were observed to be in a deteriorated condition; many were partially decomposed and the liquids were observed to be leaking from some of the drums onto the floors.

8. During the course of the aforesaid inspection of January 3, 1985, Mark Millspaugh observed that a number of the drums located within the buildings were labeled Trisec and Freon TMC in a similar fashion to those which had previously been removed from the exterior area of the Site pursuant to the Order on Consent of October 11, 1985. The contents of those drums which had been removed from the exterior portions of the Site had been analyzed and were determined to contain hazardous wastes.

9. The Site is not an authorized or permitted facility for the treatment, storage or disposal of hazardous wastes as those terms are defined in ECL §27-0901. The Site is not designed or constructed for the receipt of hazardous wastes; therefore, any hazardous wastes stored or disposed of at the Site are not properly contained. . .

10. The Site includes a retail shopping center (within portions of Buildings 4, 10, 12 and 13 as marked on Appendix A), comprised of approximately 50 stores and restaurants, known as the Charlestown Factory Outlet Mall, which is open to the public

on a regular basis for retail trade. In portions of buildings, members of the public are separated from those areas containing hazardous wastes only by wooden walls, floors and doorways.

11. In addition to the hazardous wastes referred to in Paragraph 8, supra, Mark Millspaugh has identified the presence of other hazardous wastes including sodium hydroxide. Sodium hydroxide is an acute hazardous waste which is reactive with water in such a manner as to generate heat. Other drums are labeled in such a manner as to indicate the presence of flammable, corrosive and other reactive hazardous wastes within the buildings on the Site.

12. Due to the proximity of the hazardous wastes to those areas open to the public and employees of the Charlestown Factory Outlet Mall and the ignitability of some of the wastes and the presence of sodium hydroxide within the building on the Site and the presence of other hazardous wastes within the buildings on the Site, the Site constitutes an immediate threat to the health and welfare of the public and employees who are present within said mall as well as to other persons who have occasion to do business in the immediate vicinity of the Site.

13. Based on the foregoing facts, Respondents have caused, engaged in or maintained, and are causing, engaging in or maintaining a condition or activity relating to the storage or disposal of hazardous waste which, in my judgment, presents an

imminent danger to the health and welfare of the people of the State and which has resulted in, or is likely to result in, irreversible or irreparable damage to natural resources. Said conditions or activities caused, engaged in or maintained by Respondents relate to my prevention and abatement powers pursuant to Articles 3, 27 and 71 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.

14. It is prejudicial to the interests of the people of the State of New York to delay action until an opportunity for a hearing can be provided.

NOW, THEREFORE, IT IS ORDERED THAT:

I. Within 24 hours of the service of this Order, Respondents shall:

A. Conduct a preliminary inspection of all containers present on the Site. The purpose of such inspection shall be to:

(1) identify any containers that are leaking or in a deteriorated condition;

(2) identify those areas in which any non-compatible wastes are located in close proximity to one another; and

(3) identify the presence of any water reactive wastes.

B. Secure all buildings in which hazardous wastes or suspected hazardous wastes are present at the Site. Security shall consist of the following:

- (1) Sealing of all windows so as to prevent entry;
- (2) Installation of dead bolt locks or padlocks or the equivalent on all doors, with copies of the keys for said locks being supplied to local police and fire departments;
- (3) The posting of a 24 hour security patrol at the Site;
- (4) Posting warning notices at 25 foot intervals on all buildings containing hazardous wastes; and
- (5) Any other measures deemed to be appropriate by Department personnel or local police or fire department representatives.

II. Within 48 hours of the service of this Order, Respondent shall:

- A. Remove all drums found outside to buildings secured in accordance with Paragraph I.B. above.
- B. Secure and overpack all drums and containers identified in Paragraph I.A.(1) above as leaking and/or in a deteriorated condition.
- C. Stabilize containerize any hazardous wastes that have leaked from any of the drums identified in I.A.(1) above.
- D. Separate all non-compatible wastes in accordance with 6 NYCRR Part 360.
- E. Clearly label and segregate all water reactive wastes.

III. Within five (5) days of the service of this Order:

A. Respondents shall provide the Department a performance bond in a form acceptable to the Department in the amount of \$200,000. Such performance bond shall be non-cancellable, non-diminishable, non-reducible and non-impairable until the Department acknowledges completion of those measures set forth in Paragraphs I.A.; B.; II.A., B., C., D., E.; III.B.; IV; V and VI. Should Respondent at any time fail to fulfill any of the terms hereof, the Department may use the proceeds of said performance bond for the purpose of defraying the Department's costs in undertaking the completion of those measures herein specified.

B. Submit to the Department, for its approval, a detailed plan for a complete inspection, inventory, identification, classification, and transportation and disposal of hazardous and/or industrial wastes, which are present on the Site. Said plan shall contain a time schedule for each of these steps.

IV. Within no more than 30 days from the date of this Order, Respondent shall manifest, transport and dispose of all drums present on the Site that are not empty, including the contents of all plating and etching tanks.

V. Respondent shall give DEC 36 hours notice before undertaking any of the activities described in the plan.

VI. Respondent shall retain a contractor approved by the Department to remove the wastes in accordance with applicable Federal and State law.

VII. Take notice that in the event of Respondent's failure to initiate and diligently pursue compliance with this Order immediately after service hereof in the manner hereof provided, Respondent will be subject to the sanctions provided by Article 71 of the Environmental Conservation Law of the State of New York, and that the Department will proceed further to enforce this Order.

VIII. Take further notice that a hearing will be held in the offices of the Department of Environmental Conservation, located at 50 Wolf Road, Albany, New York on January 18, 1985 at 10:30 in the forenoon thereof to provide Respondent with an opportunity to be heard and to present proof at that time and place to show why the conditions set forth above do not present an imminent danger to the health or welfare of the people of the State or will not result in, or is not likely to result in, irreversible or irreparable damage to the natural resources of the State of New York, and that Respondent may appear at the hearing in person or by representative, with or without counsel, and Respondent may produce witnesses and relevant evidence on your behalf; that all witnesses will testify under oath and that a written record of the proceedings will be made and that Respondent may cross-examine and examine evidence produced against Respondent.



DATED: Albany, New York

January 7, 1985

*Henry G. Williams*

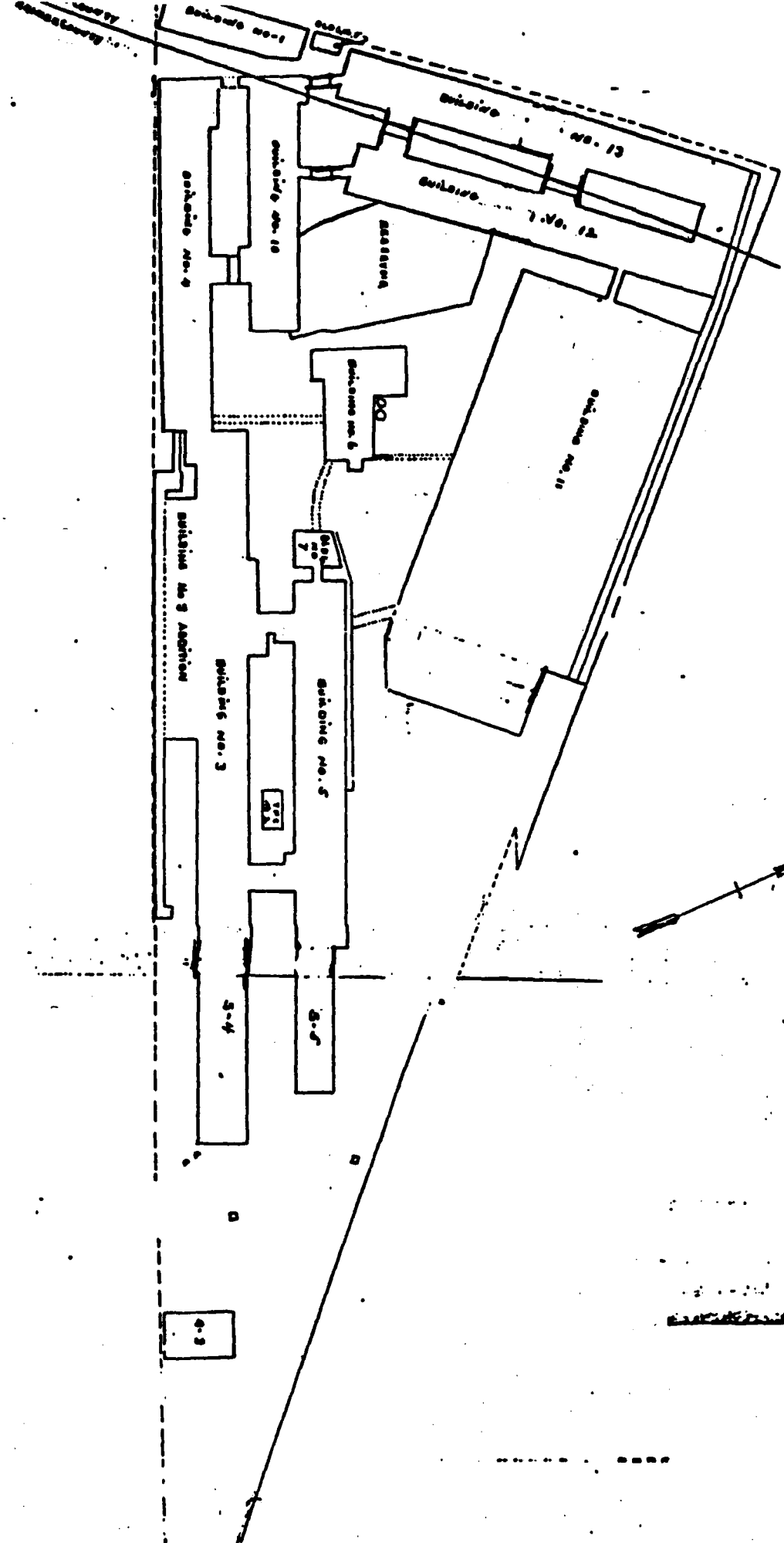
HENRY G. WILLIAMS

Commissioner

New York State Department of  
Environmental Conservation

TO: Gaetano Associates  
c/o Barry R. Kogut, Esq.  
Bond, Schoeneck & King  
1 Lincoln Center  
Syracuse, New York 13202

APPENDIX A



APPENDIX B

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program  
to Eliminate Any Threat to the Environment  
Caused by the Storage or Disposal of  
Hazardous Wastes,

ORDER  
ON  
CONSENT

GAETANO ASSOCIATES, and  
SPERRY CORPORATION

Index#T090684

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27 of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Collection, Treatment and Disposal of Refuse and Other Solid Waste", and regulations promulgated pursuant thereto in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

2. Respondent Gaetano Associates ("Gaetano") is a limited partnership organized and existing under the laws of the State of New York.

3. Gaetano presently transacts business under the assumed business name of "Charlestown Factory Outlet Center" at a parcel consisting of approximately ten acres situated partially within the City of Utica, County of Oneida, and partially within the Town of Frankfort, County of Herkimer, New York (the "Site").

4. Respondent Sperry Corporation ("Sperry") is a corporation organized and existing under the laws of the State of Delaware.

5. Respondent Sperry Corporation, formerly transacted business at the property described above.

6. The Site is an inactive hazardous waste disposal site within the meaning of ECL §27-1301(2) by reason of the presence thereof of approximately one hundred fifty-five gallon steel drums, of which approximately thirty-five drums contain hazardous or other industrial-commercial wastes.

7. Gaetano is the owner of the Site within the meaning of ECL §27-1313(3)(a).

8. The Department alleges that Sperry is a person responsible for the disposal of hazardous wastes at the site within the meaning of ECL §27-1313(3)(a).

9. Respondents have agreed to the terms of this Order because they are committed to protecting the environment and believe that a prompt cleanup of the described property is consistent with this policy. In doing so, Respondents do not admit any factual assertions made by the Department or any liability whatsoever for conditions at the site.

10. Respondents, having waived their right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agree to be bound by the provisions, terms and conditions hereof.

NOW, therefore, having considered this matter and being duly advised, pursuant to ECL §§27-1313, 71-2727, IT IS ORDERED THAT:

I. Not later than fifteen days after the effective date of this Order, respondents shall commence the implementation of an inactive hazardous waste disposal site remedial program at the Site, and shall complete the implementation of the same not later than forty-five days after the effective date of this Order.

A. All drums present at the Site shall be inspected.

B. All drums which are "empty" within the meaning of 6 NYCRR §366.1(f)(2) shall be transported and disposed of as non-hazardous solid wastes in accordance with applicable provisions of Federal and State law and regulations.

C. All drums which are not "empty" within the meaning of 6 NYCRR §366.1(f)(2) shall be sampled, and the samples separately analyzed by a laboratory approved by the Department, and shall be transported and disposed of either as non-hazardous solid wastes, or as hazardous wastes, as the results of such analyses may indicate, in accordance with applicable provisions of Federal and State law and regulations.

D. All oil-stained or otherwise contaminated surficial soils in the general vicinity of the drum disposal areas shall be excavated, removed from the Site, and transported and disposed of as hazardous wastes in accordance with applicable provisions of

Federal and State law and regulations. The areal and vertical limits of such excavation shall be those limits identified by the Department's representative at the Site.

E. After removal from the Site of all drums and contaminated soils as hereinbefore provided, soil samples shall be collected within the drum disposal areas. The number and locations of such samples shall be as designated by the Department's representative at the Site. The samples shall consist of continuous cores collected by split spoon or hand auger to a depth of two feet. The samples shall be separately analyzed by a laboratory approved by the Department, and the results of such analyses shall be provided to the Department.

F. Gaetano shall not unreasonably deny access to the Site for the purposes of performing remedial investigations or work to any other persons who the Department may determine to be liable for remediation of the Site, or to the agents, contractors or consultants of such persons.

G. Respondents shall provide notice to the Department of any remedial investigations or work to be performed pursuant hereto at least five working days in advance of such investigations or work.

H. The Department shall have the right to obtain for the purpose of comparative analysis "split samples" or "duplicate samples", at the Department's option, of all materials sampled by

respondents pursuant hereto. The Respondents shall be responsible for any Department sampling costs up to an amount of five thousand dollars (\$5,000). The Department will pay its own costs beyond that amount. As used herein: "split samples" shall mean whole samples divided into aliquots; "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical containers prepared identically, filled to the same volume, and thereafter identically handled and preserved.

Respondents shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the site for the purpose of inspecting remedial investigations or work to ascertain respondents' compliance with the provisions hereof, and/or for the purpose of identifying excavation limits and designating sampling locations as hereinbefore provided, and/or for the purpose of exercising the Department's right to obtain "split samples" or "duplicate samples" as hereinbefore provided.

The Department agrees that the terms of this Order shall not affect the liability of any other persons responsible for the operations present at the site. All rights which Sperry may have to proceed against any other responsible party are expressly reserved. This Order does not affect any rights of contribution or indemnification which Sperry may have.

All rights which Gaetano may have to proceed against any other responsible party are expressly reserved. This Order does not affect any rights of contribution or indemnification which Gaetano may have.

K. Respondents shall not be in default of compliance with this Order if they are unable to comply with any provision because of the action of a national, state or local government body or court, an act of God, war, strike or riot, catastrophe or any act or admission of a third party contractor as to any of which the negligence or willful misconduct on the part of Respondents was not the proximate cause.

L. If for any reason, Respondent desires that any provision of this Order be changed, Respondent shall make timely written application therefore to the Commissioner setting forth reasonable grounds for the change sought. No change to this Order shall be made or become effective except as may be specifically set forth in writing by the Commissioner.

M. Nothing herein contained shall constitute a waiver by the Department of its right to bring any action or proceeding to which it may be entitled according to law against respondent, or any person or entity not a party hereto, to require the performance of a further inactive hazardous waste disposal site remedial program at the Site, or to obtain any other relief.

N. Respondents' failure to comply with the provisions, terms and conditions of this Order shall constitute a failure to perform a duty imposed by an order of the Commissioner of Environ-

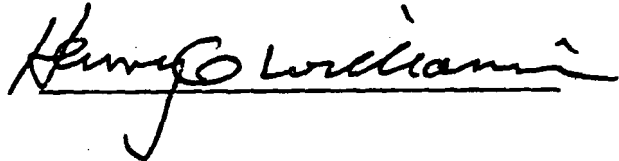


mental Conservation made pursuant to ECL Article 71, Title 27.

0. The effective date of this Order shall be the date upon which it is executed by the Commissioner of Environmental Conservation, or his designee.

DATED: Albany, New York  
OCT 11 1984 , 1984 .

HENRY G. WILLIAMS  
Commissioner  
New York State Department of  
Environmental Conservation

A handwritten signature in cursive script, reading "Henry G. Williams", written over a horizontal line.

CONSENT BY RESPONDENTS

Respondents Sperry Corporation and Gaetano Associates hereby consent to the issuing and entering of the foregoing Order, waive their right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

SPERRY CORPORATION

By: Marshall M. Truex

Title: ASSISTANT SECRETARY

Date: September 11, 1984

STATE OF Pennsylvania  
COUNTY OF Montgomery ) ss.:

On this 11th day of September, 1984, before me personally came Marshall M. Truex, to me known, who being duly sworn, did depose and say that he resides in Malvern, Pa; that he is the ASSISTANT SECRETARY of the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

John P. Howell  
Notary Public  
My Commission Expires April 27, 1985

GAETANO ASSOCIATES

By: Charles A. Gaetano

General Partner

STATE OF NEW YORK )  
COUNTY OF ONEIDA ) ss.:

On this 14 day of Sept, 1984, before me personally came Charles A. Gaetano, to me known, and known to me to be a general partner of Gaetano associates, the partnership described in and which executed the foregoing instrument, and acknowledged to me that he/she signed his/her name thereto as the act and deed of Gaetano Associates.

Stuart E. Finer  
Notary Public, State of New York  
No. 629370  
Qualified in Oneida County  
Commission expires March 29, 1986

Stuart E. Finer  
Notary Public

# Exhibit 7

JOHN C. KINNEY (1947-1974)  
HUBERT C. STRATTON (1927-1978)  
HOWARD H. CANNON (1927-1978)  
ANTON H. ZAHN (1947-1984)  
WILLIAM F. FITZPATRICK (1929-1984)

## BOND, SCHOENECK & KING

ONE LINCOLN CENTER

SYRACUSE, NEW YORK 13202-1355

(315) 422-0121  
TELEX 846-690

III WASHINGTON AVENUE  
ALBANY, NEW YORK 12210-2280  
(518) 462-7421

PYLON PARK  
5301 NORTH FEDERAL HIGHWAY  
BOCA RATON, FLORIDA 33431-4990  
(305) 997-0411

1167 THIRD STREET SOUTH  
NAPLES, FLORIDA 33940-7098  
(813) 262-8812

JOHN E. NOAKES  
OF COUNSEL

DAVID L. DAWSON \*  
THOMAS J. VALENTI \*  
BARRY R. KOGUT \*  
M. CATHERINE RICHARDSON  
DAVID R. SHERIDAN  
JOHN GAAL  
JOSEPH ZAGRANICZNY  
CHARLES H. GRUNDNER  
THOMAS R. SMITH  
JOSEPH R. COOK \*  
ROBERT K. WEILER  
THOMAS D. KELEHER  
R. DANIEL BORDONI  
JAMES N. SEELEY  
RONALD C. BERGER  
ROBERT C. ZUNDEL, JR. \*  
DAVID A. RIGGS  
THADDEUS J. LEWKOWICZ  
LUCIA M. IZZO

ANN R. PURDUE  
JOSEPH T. ROTONDO  
EDWIN J. KELLEY, JR.  
LARRY P. MALTANO  
JOHN H. CALLAHAN  
JOHN G. MCGOWAN  
EDWARD RYAN CONAN  
JOSEPH P. VAN DE LOO  
GEORGE J. GETMAN \*  
JEAN A. MACCHIAROLI  
DEBORAH H. KARALUNAS  
RYNA E. MEHR \*\*  
CHRISTIAN B. FELDEN \*\*  
DONALD S. DISENEDETTO  
ROBERT A. LABERGE  
WILLIAM R. MORIARTY  
MAURA A. FLOOD  
SCOTT C. SELBACH  
RICHARD A. REED

\*ALSO ADMITTED TO FLA. BAR  
\*\*ADMITTED IN FLA. ONLY

CHARLES A. SCHOENECK, JR.  
NANCY H. FERGUSON  
W. HORNBECK  
ESTER H. KING, JR.  
W. EARLE EVANS  
FRANCIS E. MALONEY  
FRANCIS D. PRICE \*  
JAMES E. WILBER \*  
HENRY R. MCCARTHY  
RAYMOND W. MURRAY, JR.  
JOSEPH J. LAWTON, JR.  
GEORGE C. SHATTUCK  
LESLIE H. DEMING  
JOHN J. DEE  
JOHN A. BEACH \*  
CHARLES T. BEECHING, JR.  
WILLIAM P. BURROWS  
JOHN M. FREYER \*  
ROBERT W. KOPP  
ARTHUR E. BONGIOVANNI \*  
JOHN S. FERGUSON  
CHARLES T. MAJOR  
ROBERT E. MOSES  
WILLIAM L. BERGAN  
ANTHONY R. PITTARELLI \*  
FRANCIS E. MALONEY, JR.

WALLACE J. McDONALD \*  
JAMES D. FITZPATRICK  
ROBERT J. HUNT \*  
STEPHEN L. JOHNSON  
JAMES E. MACKIN \*  
DAVID N. SEXTON \*  
GARY R. GERMAIN  
THOMAS S. EVANS \*  
H. DEAN HEBERLIG, JR.  
THOMAS J. GROOMS  
RICHARD L. SMITH  
JAMES P. McDONALD \*  
STEPHEN J. VOLLNER  
S. PAUL BATTAGLIA  
L. LAWRENCE TULLY  
PAUL M. SANSOUCY \*  
GARY M. CLARK  
RICHARD C. HEFFERN  
RICHARD D. MOLE  
GEORGE H. LOWE  
T. PETER POETZSCH  
JOHN D. ALLEN  
DAVID M. PELLOW  
THOMAS E. MYERS  
LOUIS R. DILORENZO  
CARL ROSENBLUM

January 14, 1985

David Engel, Esq.  
Assistant Counsel  
Division of Environmental  
Enforcement  
New York State Department  
of Environmental Conservation  
Room 105  
50 Wolf Road  
Albany, New York 12224

Re: Charlestown Factory Outlet  
Utica, New York

Dear David:

Pursuant to paragraph III (B) of the summary  
abatement order, I have enclosed the following:

- (a) Exhibit A - Remedial Action Plan prepared  
by Allwash.
- (b) Exhibit B - Allwash's Respiratory Protection  
Program.
- (c) Exhibit C - Allwash's Medical Surveillance  
Program.
- (d) Addendum - Inventory of the wastes. All the  
recited descriptions of the various wastes were taken from  
labels affixed to the drums.

David Engel, Esq.  
January 14, 1985  
Page 2

For your use, I have enclosed two additional sets of the enclosures. If you have any questions, please call.

I await hearing from you on the form of the letter of credit/performance bond which would be acceptable to the DEC. Pursuant to our discussions, it is my understanding that this security need not be provided until Friday, January 18th.

Sincerely,

BOND, SCHOENECK & KING

By: *Barry*  
Barry R. Kogut

BRK:jal

Enclosures

cc: Gaetano Associates  
Mr. Steve Weiss, Allwash  
Richard W. Klippel, P.E.,  
Calocerinos & Spina

# CHARLESTOWN FACTORY OUTLET CENTER

UTICA, NEW YORK

## Remedial Action Plan

- I. Purpose: The purpose of this remedial action plan is to comply to the requirements as set forth in the Department Of Environmental Conservation's Summary Abatement Order dated January 7, 1985 and issued to Gaetano Associates, c/o Barry R. Kogut, Esq., Bond Schoenech & King, Syracuse, New York on January 8, 1985. Specifically items I through VI which apply to the contractor's responsibility for identification, containment, removal, transportation, and disposal
- II. Objectives: The objectives of this plan is to set forth procedures for the complete inspection, inventory, identification, classification, transportation, and disposal of hazardous and/or industrial waste, which are present on the site
- III. Personal Protection
  - A. All workers utilized on project to be participants within company medical surveillance program, have received orientation and training in hazardous material control procedures, have received training and been fit tested for use of respiratory protective equipment
  - B. Allwash personnel directly involved with the containment of leaking containers and movement of all containers will be equipped with half face respirators, #R53 high efficiency cartridges, hard hats with full face shields, safety glasses, PVC suits, trapper gloves, nitrile gloves, cotton liners, protective boots, and coveralls
  - C. Allwash personnel indirectly involved with the operation will be equipped with hard hats, safety glasses, protective boots, coveralls, glove liners, and work gloves

- D. Allwash personnel will be required to shower prior to taking a coffee break, lunch break, facility break, and at the end of each work day. Showering facilities will be located in the boiler house which is noted on site plans as building number 6
- E. All protective equipment will be left in a secured equipment box located in building number 18, area 2 shown on site plan
- F. Complete medical surveillance and respiratory protection program are included in this plan

#### IV. Staging Area

- A. Allwash will designate and setup a staging area for the storing of materials and equipment necessary to supply the project
- B. Materials included in staging area but not limited to will be overpack drums, 17H and 17E plastic lined drums, protective gear, safety materials, first aid kit, tools, and labeling materials
- C. Equipment included in staging area but not limited to will be lights, generators, pumps, saws, cameras, and miscellaneous testing and sampling equipment
- D. Recordkeeping also will be performed in the staging area

#### V. Emergency Spill Plan During Entire Remedial Action Plan

- A. All workers are dressed in protective garments as well as respiratory protection
- B. A large supply of containment material in the event of an unplanned spill or leak during Remedial Action Plan is kept on hand in work area

- C. A large supply of overpack containers, neutralizers, plug and dike material is kept on hand at work site
- D. Two-way radio communication
- E. Fire extinguishing equipment
- F. Self contained breathing apparatus
- G. Two-way radio communication has been established with Charlestown Mall office which has direct communications to fire or other emergency personnel if necessary

VL. Specific Plan Details

PHASE 1: Inventory

Date of Commencement: January 8, 1985

Date of Completion : January 14, 1985 (at 5:00 p.m.)

- A. Initial survey of the site to visually inspect the magnitude of the work to be performed
- B. Determine and setup staging areas and showering facilities
- C. Identify all leaking and deteriorated containers. All leaking and deteriorated containers will be secured by placing leaking containers into DOT approved overpack containers (i.e., 17 DOT, 17E DOT, 80 gallon DOT overpacks)
- D. Spilled chemicals
  - 1. All spilled chemicals will be placed in proper DOT approved containers
  - 2. All chemicals will be neutralized if possible



3. All spilled chemicals will be absorbed with use of various absorbent materials
4. Physical areas where chemical has spilled
  - a. All areas where chemical has spilled will be properly cleaned and neutralized after spilled chemical has been removed
5. Pallets and material
  - a. Any pallets or material contaminated by spilled chemical will be placed into the proper DOT containers for disposal
- E. Identify non-compatible wastes which are located in close proximity to one another
  1. Remove all non-compatible wastes from each other in accordance with 6 NYCRR Part 360
- F. Identify the presence of any water reactive wastes
  1. Place all water reactive waste into secured containers and place in dry area
- G. Relocate containers which are adjacent to outlet stores and occupants
- H. Inventory all containers found on site
  1. Label all containers with building location, site location and container number

2. Provide log sheet with available information such as approximate size, contents, quantity, contents description, manufacturer, manufacturer's telephone number and consignee information
3. Field sampling of all material to be performed by certified chemist for results of flammability, pH, and TLV Sniffer. All materials logged will be placed into the following categories
  - a. Waste oils
  - b. Waste caustics
  - c. Waste acids
  - d. Waste solvents
  - e. Phenols
  - f. Cyanides
  - g. Highly explosives (i.e., ether)
  - h. Unknowns

1. All unknowns will be addressed in Phase 2

I. Containers outside of building

1. All containers found outside of building will be logged, labeled, field tested, categorized, and moved inside of building to secured area

2. All containers of chemicals of less than one gallon will be logged, field tested, identified for chemical properties and compatibilities, placed in absorbent materials, and packed in proper DOT drums
- J. All explosive materials (i.e., ether) will have all adjacent materials moved away from, area diked, secured, taped with warning signs, and left in place until they can be safely neutralized or moved
- K. Empty containers
  1. All empty containers to be logged and painted with letters "MT" for distinguishing
- L. Plating and etching tanks to be covered with 6 mil poly and taped to eliminate any potential fumes from escaping

PHASE 2: Testing

Date of Commencement: January 14, 1985

Date of Completion (estimated): January 28, 1985

- A. Secured diked areas to be erected in accordance with 6 NYCRR Part 360.8. These secured areas will be for central staging of compatible chemicals for sampling and testing for disposal. Each staging area will contain 6 separate diked areas. The 6 diked areas are as follows
  1. Waste oils
  2. Waste caustics
  3. Waste acids

4. Waste solvents
5. Phenols
6. Cyanides
7. Additional diked areas will be erected if additional chemical properties are found and are non-compatible with the above mentioned categories

B. Diked areas to be erected of 2x8 lumber around perimeter

1. Dike will be covered with two layers of 6 mil poly
2. Wood construction to be filled with Speedi-Dry or clay absorbent and backed on the outside with Speedi-Dry and concrete blocks
3. Inside dike poly will be pinned down with small amounts of Speedi-Dry
4. Poly will be stapled to top of dike

C. Movement of categorized material

1. All material to be rechecked prior to movement for security of containers
  - a. If containers are found to be deteriorated since initial inspection, containers will be placed in proper DOT approved overpack containers prior to movement

2. Movement

- a. All chemicals will be moved manually or with use of fork lifts and pallets to staging diked in area

3. Sampling and testing

- a. All testing to be performed by the firm of Calocerinos & Spina Consulting Engineers, 1020 Seventh North Street, Liverpool, New York, 13088
- b. Once all material has been moved to staged, diked in area, Calocerinos & Spina will perform sampling and testing of every container for information needed by TSDF facilities to determine which facility the material must be shipped to

D. Unknowns

- 1. All unknown chemicals in containers will be sampled and tested in their current location by Calocerinos & Spina to determine what category and what TSDF facility might receive them. Once test results are received, these containers will be moved to diked in area with compatible chemicals

E. Test results

- 1. It is the opinion of Calocerinos & Spina that test result turn around time will be a minimum of 1½ to 2 weeks from the time all samples are received in their laboratory
- 2. All testing to be performed for disposal purposes only

- a. Percentage of chlorine
  - b. Percentage of sulphur
  - c. BTU
  - d. Specific gravity
  - e. pH testing
  - f. Flash points
  - g. Waste oil PCB (spot testing)
  - h. Trace heavy metals (spot testing) [i.e., total lead, total chromium, total cadmium, and total nickel]
  - i. Other testing as required (i.e., E.P. toxic extractions, cyanides, volatile organics)
- F. Location and categories of diked areas will be clearly labeled and once again, local police and fire department agencies and the Department Of Environmental Conservation will be supplied with the location of these chemicals
- G. Plating and etching tanks
- 1. Any liquids found in plating and etching tanks will be sampled and tested by Calocerinos & Spina

3. Once test results are achieved, liquids will be pumped into DOT approved containers and removed to diked in staging area
4. All tanks will then be neutralized and cleaned to remove any trace of contaminants

PHASE 3: Removal

Date of Commencement (estimated): January 28, 1985  
Date of Completion (estimated) : February 11, 1985

- A. In Calocerinos & Spina's opinion, the turn around time for test results is approximately 1 1/2 to 2 weeks. Given the indefiniteness of the time required to complete the testing phase of the work, the projected date of completion must be considered approximate.
- B. Once test results have been received, all materials will again will be checked to assure their shipability. If containers are at all further deteriorated, they will be placed in proper DOT overpack containers for shipment
- C. TSDF facility will be chosen based on test results
- D. All containers will be properly labeled as per DOT and DEC regulation for shipment
- E. Manifestation of all material to be transported and disposed of
- F. TSDF facilities proposed for disposal are
  1. Fondessy Enterprises, Inc.  
876 Otter Creek Road  
P.O. Box 7571  
Oregon, Ohio 43616  
EPA ID # OHD 045243706  
Disposal items - Secure landfill: contaminated solids & debris, bottom sludges

2. Frontier Chemical Waste Process, Inc.  
4626 Royal Avenue  
Niagara Falls, New York 14302  
EPA ID # NYD 043815703  
Disposal items - Tertiary waste water treatment: acids,  
caustics and unused chemicals; cyanide destruction;  
and solvent & oil blending/incineration
3. BDT, Inc.  
4255 Research Parkway  
Clarence, New York 14031  
EPA ID # NYD 000632372  
Disposal items - Reactive inorganic metals
4. CECOS International  
56th and Pine Avenue  
Niagara Falls, New York 14302  
EPA ID # NYD 080336241  
Disposal items - Secure landfill: contaminated solids  
& debris, bottom sludges

G. Empty containers to be crushed and disposed of in a  
permitted landfill as necessary

H. Transportation

1. All transportation of materials will be performed  
by Allwash Of Syracuse, Inc., EPA ID #  
NYD 051735561, NYS Waste Transporter Permit  
Part 364 # 7A-029; or Tonawanda Tank Transport  
Services, 1140 Military Road, Buffalo, New York  
14217, EPA ID # NYD 097644801, NYS Waste  
Transporter Permit Part 364 # 9A-080
2. Materials will then be transported and disposed  
of at proper TSDF facility



PROPOSED - SECURED  
DIKE AREA FOR CENTRAL  
STAGING

SHEET 10

1/11/85

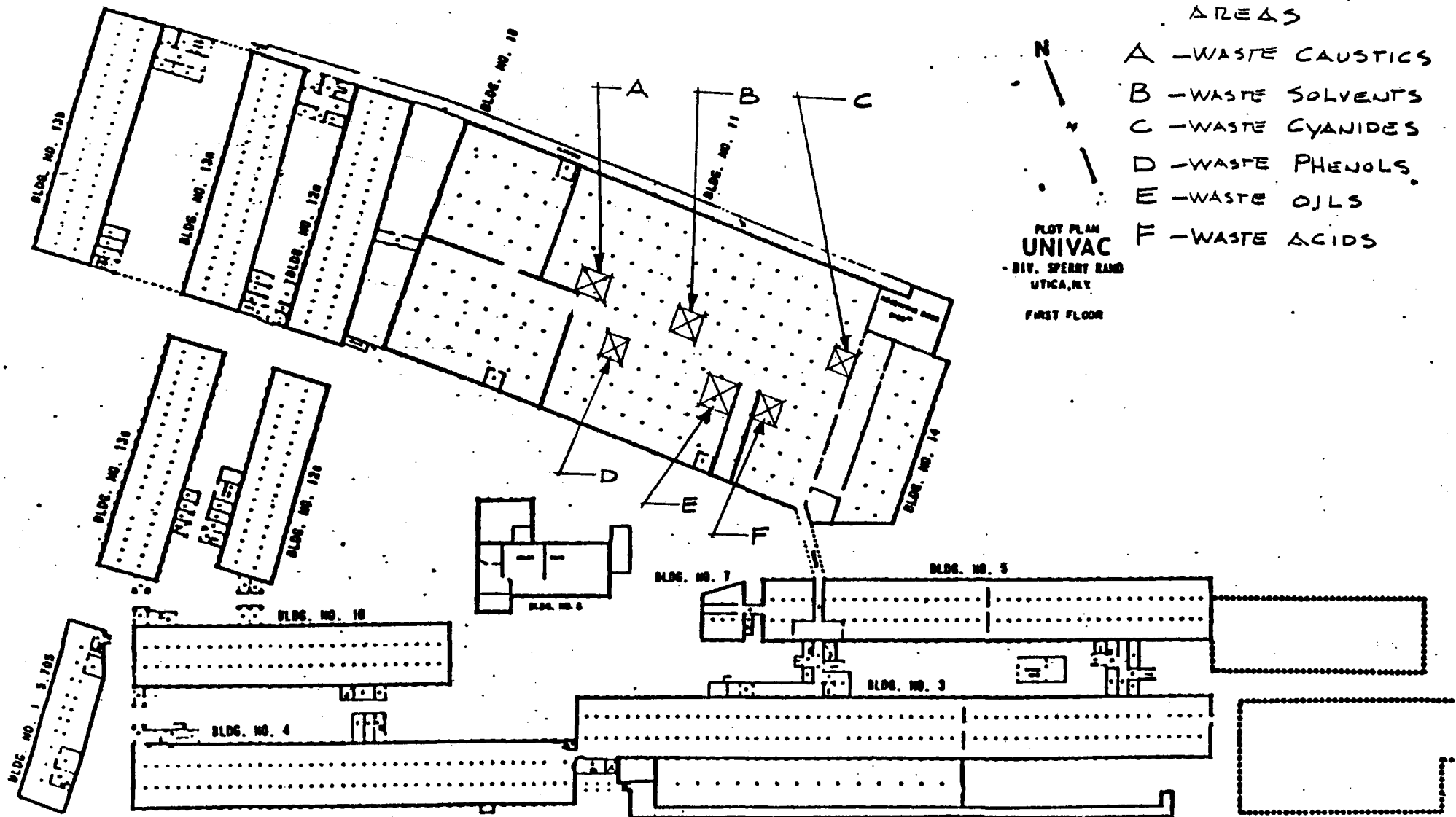
KEY:

HAZARDOUS MATERIAL

MATERIAL STAGING  
AREAS

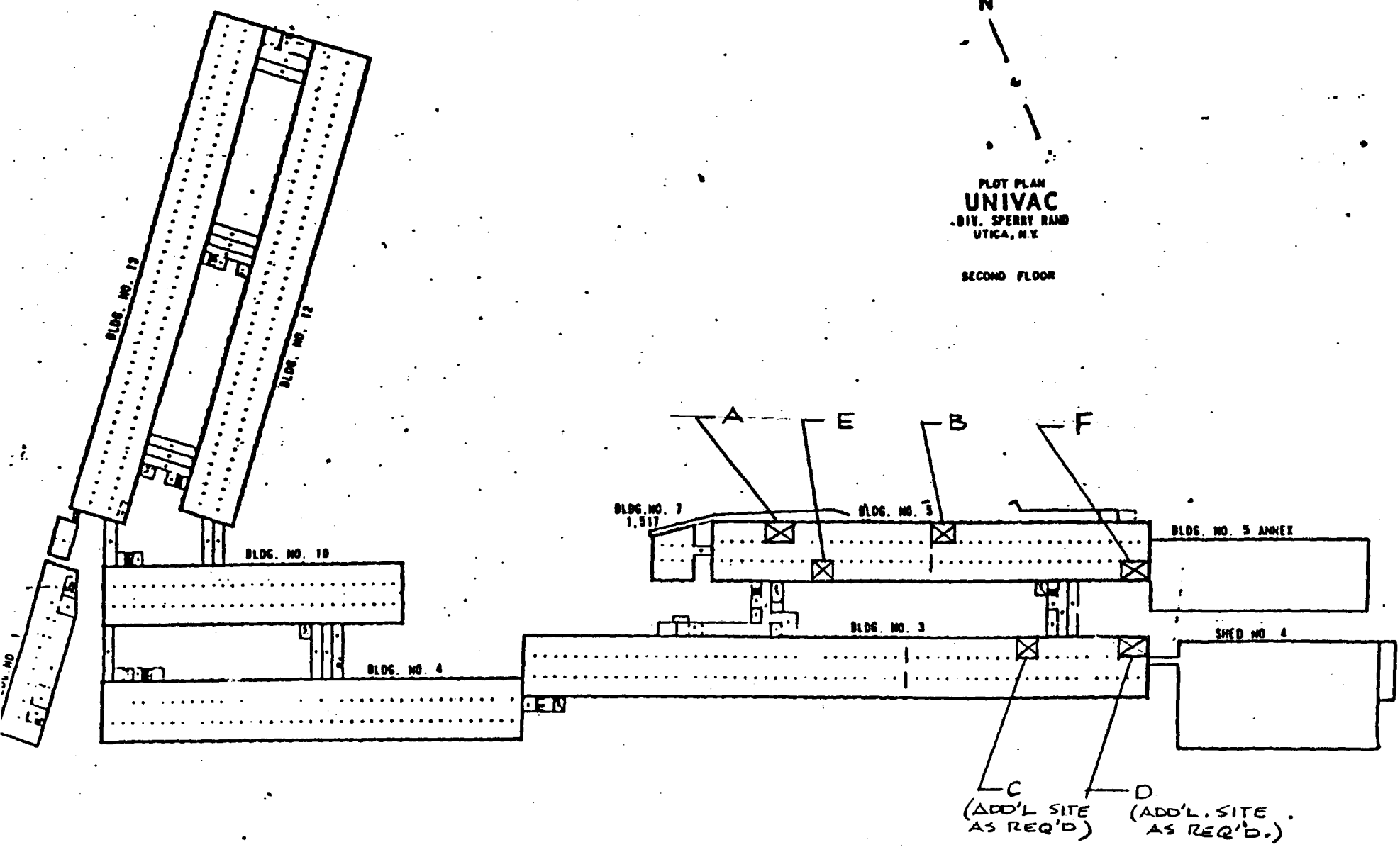
- A - WASTE CAUSTICS
- B - WASTE SOLVENTS
- C - WASTE CYANIDES
- D - WASTE PHENOLS
- E - WASTE OILS
- F - WASTE ACIDS

PLAT PLAN  
**UNIVAC**  
- DIV. SPERRY RAND  
UTICA, N.Y.  
FIRST FLOOR



1/11/55  
SECURED DIKE AREAS

N  
PLOT PLAN  
**UNIVAC**  
DIV. SPERRY RAND  
UTICA, N.Y.  
SECOND FLOOR



SHEET 1 OF 4  
1/11/85

KEY:

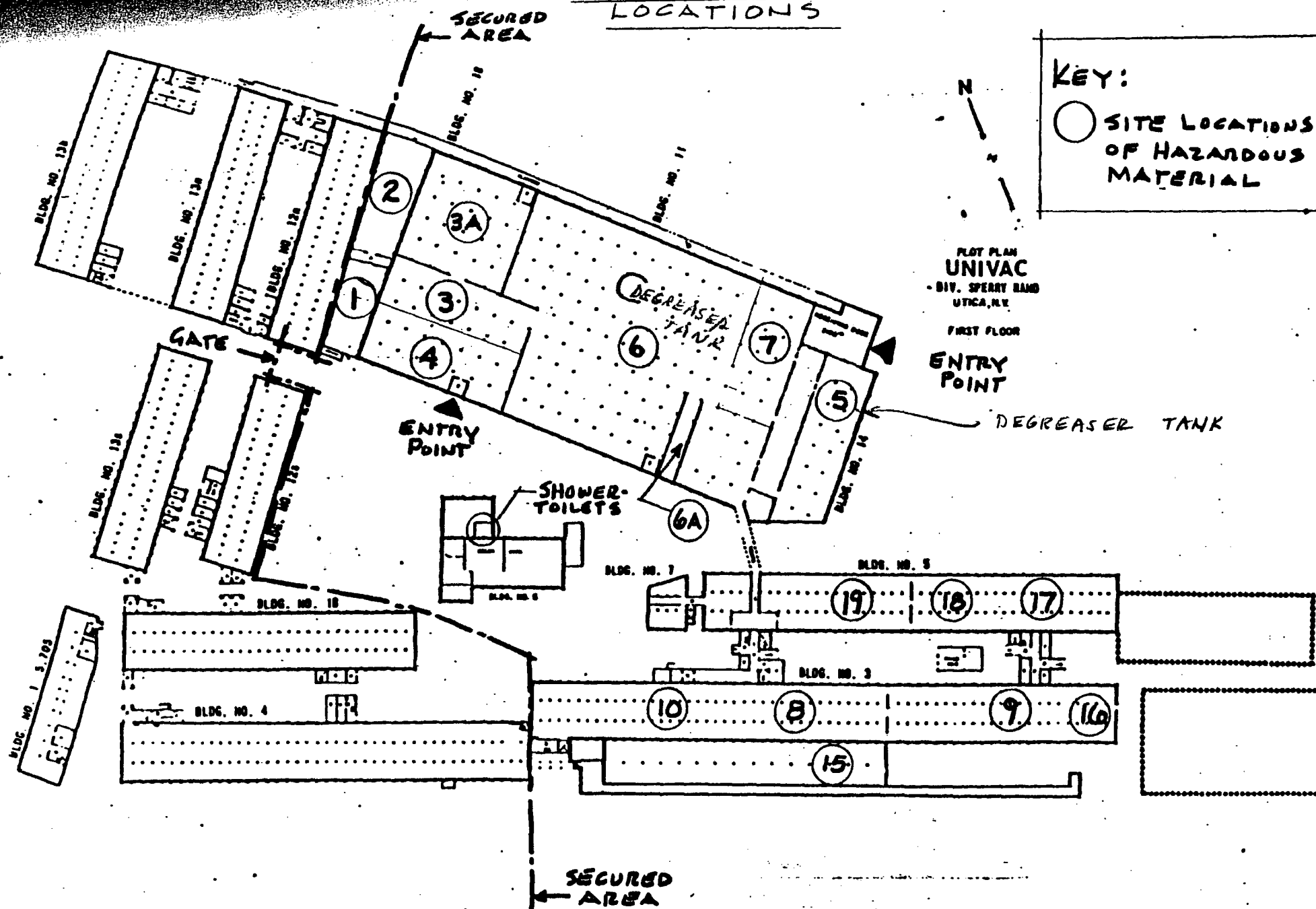
○ SITE LOCATIONS  
OF HAZARDOUS  
MATERIAL

**PLAT PLAN**  
**UNIVAC**  
**- DIV. SPERRY RAND**  
**UTICA, N.Y.**

**FIRST FLOOR**

ENTRY  
POINT

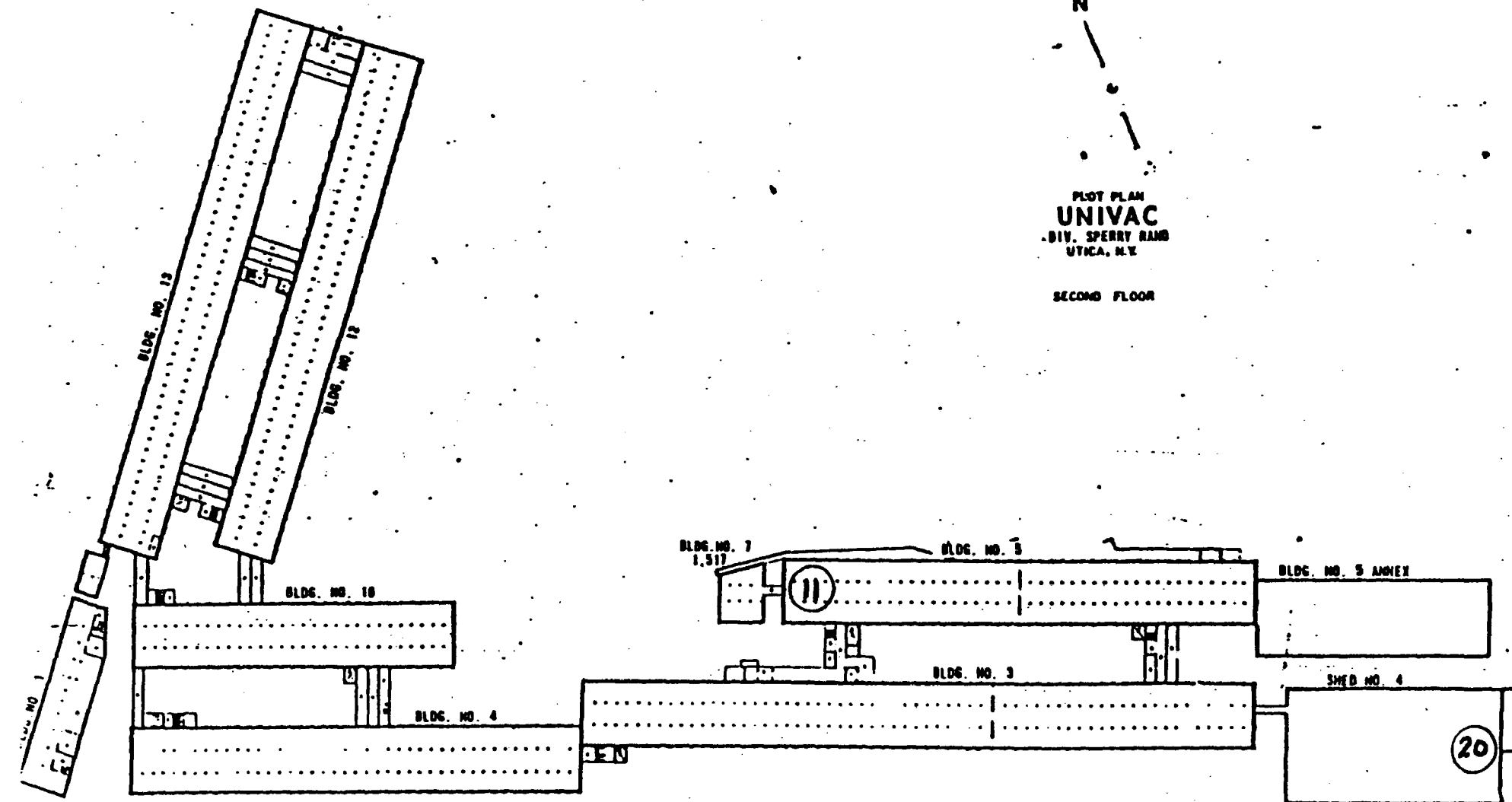
DEGREASER TANK



SHEET 2 OF 4  
1/11/85  
SITE LOCATIONS

N  
PLOT PLAN  
**UNIVAC**  
DIV. SPERRY RAND  
UTICA, N.Y.

SECOND FLOOR

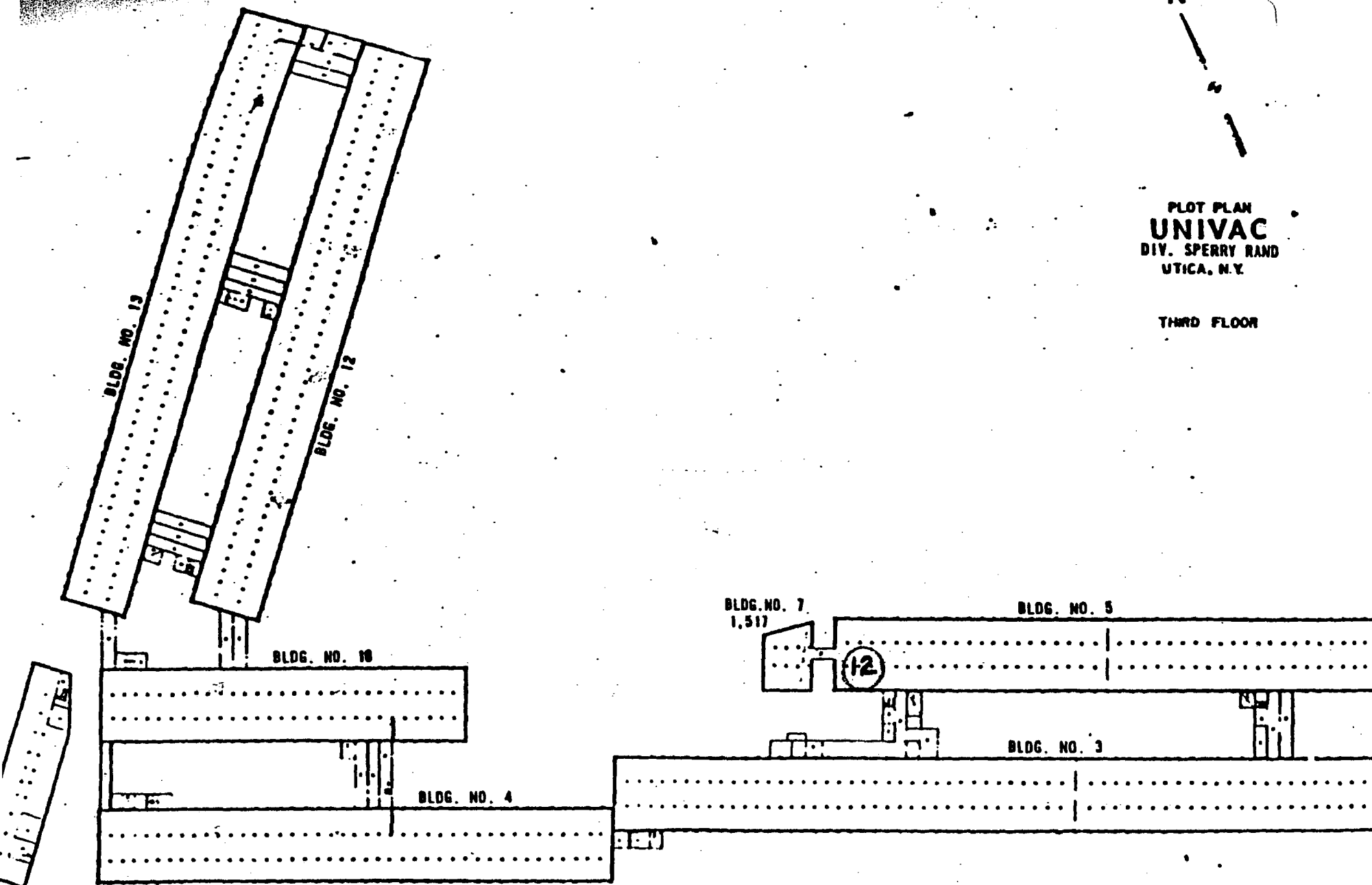


SHEET 3 OF 4  
SITE LOCATIONS

N

PLOT PLAN  
**UNIVAC**  
DIV. SPERRY RAND  
UTICA, N.Y.

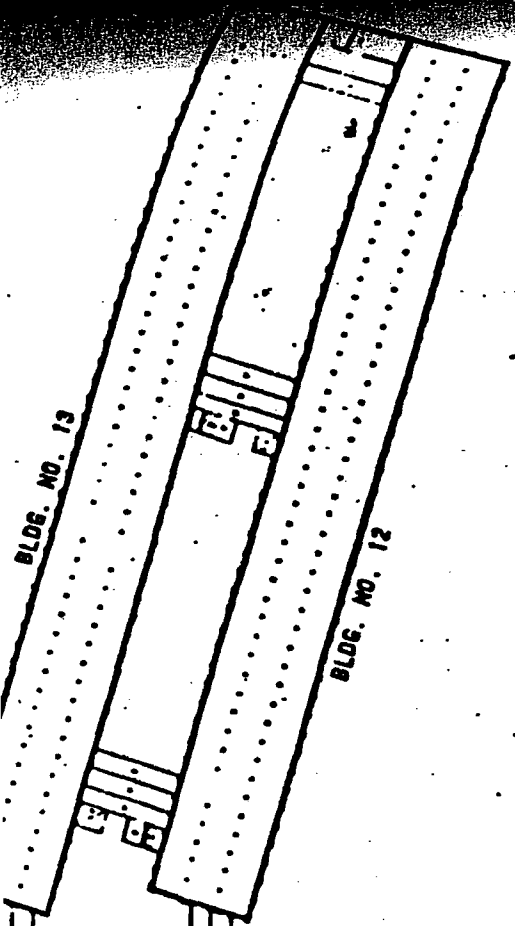
THIRD FLOOR



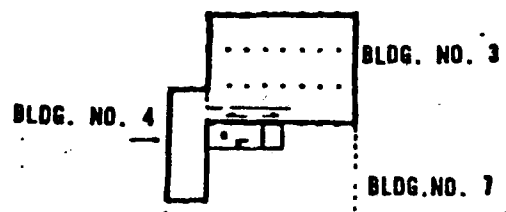


PLOT PLAN  
**UNIVAC**  
DIV. SPERRY RAND  
UTICA, N.Y.

FOURTH FLOOR

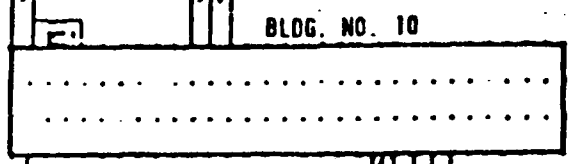


FIFTH FLOOR



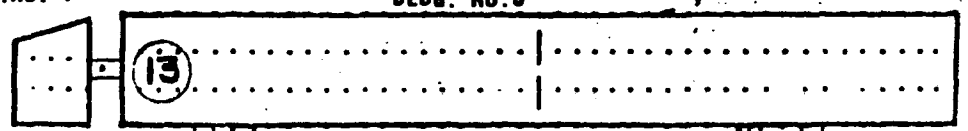
BLDG. NO. 7

BLDG. NO. 5

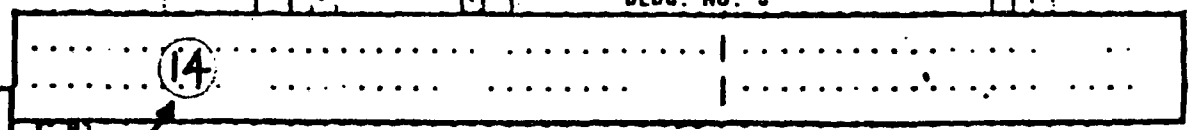


BLDG. NO. 4

DEGREASER TANK



BLDG. NO. 3



MOVE CONTAINERS  
TO NEW LOCATION

# Exhibit 8

# CharlesTown

FACTORY OUTLETS CENTER

A GAETANO ASSOCIATES DEVELOPMENT • 311 TURNER STREET, UTICA, NEW YORK 13501 • 315-724-8175

February 6, 1987

New York State Dept. of Environmental Conservation  
Regulatory Fee Unit  
Room 109  
50 Wolf Road  
Albany, New York 12233

ATT: Barbara Barrell


RE: Order on Consent #T121586

Dear Barbara,

Enclosed is a check for \$13,000.00 for above referenced  
Order on Consent.

Very truly yours,

GAETANO ASSOCIATES



Charles A. Gaetano  
General Partner

**CHARLES TOWN**  
311 TURNER ST.  
UTICA, NEW YORK 13501

DATE	INVOICE	AMOUNT

50-77  
213


7839

PAY Thirteen thousand and 00/100 DOLLARS

DATE	TO THE ORDER OF	CHECK NO.	GROSS AMOUNT				DISCOUNT	CHECK AMOUNT	
			OTHER	ACCTS. PAYABLE					
2/5/87	New York State Dept. of Environmental Conservation	7839	13000	-				13000	-

GAETANO ASSOCIATES - LIMITED PARTNERSHIP



 NORSTAR  
BANK  
UTICA,  
NEW YORK

⑈007839⑈ ⑆021300776⑆ 101 28105 3⑈



# BOND, SCHOENECK & KING

ONE LINCOLN CENTER

SYRACUSE, NEW YORK 13202-1355

(315) 422-0121

111 WASHINGTON AVENUE  
ALBANY, NEW YORK 12210-2280  
(518) 462-7421

216 WASHINGTON STREET  
WATERTOWN, NEW YORK 13601-3389  
(315) 788-3327

PYLON PARK  
5301 NORTH FEDERAL HIGHWAY  
BOCA RATON, FLORIDA 33431-4990  
(305) 997-0411

1167 THIRD STREET SOUTH  
NAPLES, FLORIDA 33940-7098  
(813) 262-6812

January 30, 1987

JOHN E. NOAKES  
OF COUNSEL

DAVID L. DAWSON \*  
DAVID R. SHERIDAN  
ROBERT K. WEILER  
THOMAS D. KELEHER  
R. DANIEL BORDONI  
JAMES N. SEELEY  
RONALD C. BERGER  
HENRY H. MELCHOR  
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JOSEPH T. ROTONDO  
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D. FRED GARNER \*\*  
JOHN S. WESTRICK  
HEIDI JUHL \*\*  
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LOUIS A. ALEXANDER  
CHARLES M. ALEXANDER  
PAUL T. WEINSTEIN  
ELIZABETH S. RIKER  
JUDITH H. ROSENBAUM \*\*  
R. SCOTT PRICE \*\*  
DENNIS D. CURTIN

\* ALSO ADMITTED TO FLA. BAR  
\*\* ADMITTED IN FLA. ONLY

HUBERT C. STRATTON (1927-1978)  
HOWARD H. CANNON (1927-1979)  
ANTON H. ZAHM (1947-1984)  
WILLIAM F. FITZPATRICK (1929-1984)

CHARLES A. SCHOENECK, JR.  
TRACY H. FERGUSON  
LYLE W. HORNBECK  
CHESTER H. KING, JR.  
N. EARLE EVANS  
FRANCIS E. MALONEY  
FRANCIS D. PRICE \*  
JAMES E. WILBER \*  
HENRY R. MCCARTHY  
RAYMOND W. MURRAY, JR.  
JOSEPH J. LAWTON, JR.  
GEORGE C. SHATTUCK  
LESLIE H. DEMING  
JOHN J. DEE  
JOHN A. BEACH \*  
CHARLES T. BEECHING, JR.  
WILLIAM P. BURROWS  
JOHN M. FREYER \*  
ROBERT W. KOPP  
CHARLES T. MAJOR  
JOHN S. FERGUSON  
ROBERT E. MOSES  
ARTHUR E. BONGIOVANNI \*  
WILLIAM L. BERGAN  
ANTHONY R. PITTARELLI \*  
FRANCIS E. MALONEY, JR.  
WALLACE J. McDONALD \*  
JAMES D. FITZPATRICK

STEPHEN L. JOHNSON  
JAMES E. MACKIN \*  
DAVID N. SEXTON \*  
GARY R. GERMAIN  
THOMAS S. EVANS \*  
H. DEAN HEBERLIG, JR.  
THOMAS J. GROOMS  
RICHARD L. SMITH  
JAMES P. McDONALD \*  
S. PAUL BATTAGLIA  
STEPHEN J. VOLLMER  
L. LAWRENCE TULLY  
PAUL M. SANBOUY \*  
GARY M. CLARK  
RICHARD C. HEFFERN  
RICHARD D. HOLE  
GEORGE H. LOWE  
JOHN D. ALLEN  
DAVID M. PELLOW  
THOMAS E. MYERS  
LOUIS P. DILORENZO  
CARL ROSENBLUM  
BARRY R. KOGUT \*  
M. CATHERINE RICHARDSON  
JOHN GAAL  
JOSEPH ZAGRANICZNY  
THOMAS R. SMITH

Mr. Charles A. Gaetano  
Gaetano Associates  
311 Turner Street  
Utica, New York 13501

Dear Chuck:

Enclosed is a copy of the fully executed DEC Consent Order on resolving the administrative penalty issue in the Charlestown cleanup.

In accordance with paragraph I(1), you are required to pay \$13,000 within fifteen (15) days after the effective date of the Order, that is, by February 6. The first installment payment of \$2,000 on the remainder of the fine shall be due thirty (30) days after your payment of the \$13,000 sum. (See ¶ I(2)).

If you have any questions, please call.

Sincerely,

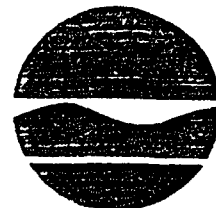
BOND, SCHOENECK & KING

By: *Barry*  
Barry R. Kogut

BRK/paf  
Enclosure

cc: Stuart E. Finer, Esq.

New York State Department of Environmental Conservation  
50 Wolf Road, Albany, New York 12233-



Henry G. Williams  
Commissioner

January 28, 1987

CERTIFIED MAIL

Barry Kogut, Esq.  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, New York 13202

Re: Gaetano Associates

Dear Mr. Kogut:

Served upon you herewith is a fully executed copy of the  
Order on Consent in the above-referenced matter.

Sincerely,

Joseph Forti  
Attorney  
Division of Environmental  
Enforcement  
(518) 457-3296

RECEIVED  
BOND SCHOENECK & KING

JAN 30 1987

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

STATE OF NEW YORK:  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the matter of violations of  
Article 27 and the payment of  
regulatory fees pursuant to  
the Environmental Conservation  
Law by:

ORDER  
ON  
CONSENT

Gaetano Associates

INDEX # T121586

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WHEREAS:

1. The NYS Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27 of the Environmental Conservation Law of the State of New York (the "ECL") and the collection of Regulatory Fees pursuant to Article 72 of the ECL.
2. Respondent, Gaetano Associates, is a limited partnership organized and existing under the laws of the State of New York.
3. Respondent presently transacts business under the assumed business name of "Charlestown Factory Outlet Center" at a parcel consisting of approximately twelve buildings located on approximately ten acres situated partially within the City of Utica, County of Oneida, and partially within the Town of Frankfort, County of Herkimer, New York (the "Site").
4. The Department alleges as follows:
  - (a) at some time prior to April 1, 1983 Respondent began storing in excess of 500 drums, ranging in size from 30 to 55 gallons, of hazardous wastes at the Site. A number of

those drums were in a deteriorated condition; many were partially decomposed and the liquids from some of the drums leaked onto the ground; and

(b) respondent did not have a permit to store hazardous wastes at the site.

5. The Site is listed on the Department's registry of inactive hazardous waste disposal sites and presently has a classification of "5".

6. On January 7, 1985, the Commissioner of Environmental Conservation (the "Commissioner") issued a Summary Abatement Order which required that Respondent take certain steps to eliminate conditions at the Site which the Department believed presented an imminent danger to the health and welfare of the people of the State.

7. On February 12, 1985 the Commissioner issued an Order on Consent (Index # T012885) which modified certain time limits for compliance with the January 7, 1985 Summary Abatement Order, and the Respondent fully complied with the terms and conditions of the Consent Order.

8. The Department allegedly incurred analytical costs totaling \$2,009.00 in conjunction with its investigation of and oversight of Respondent's remediation of the Site.

9. (a) Ten electrical transformers containing polychlorinated biphenyl (PCB) oils in excess of 50 parts per million (ppm) are being stored by Respondent at the Site. Two of these

transformers are considered PCB Transformers because their oil contains 500 ppm PCB or greater.

(b) In addition, four PCB Transformers are being stored at property known as the "Old General Cable Building" on Mill Street in the City of Rome, New York. These transformers are owned by Charles A. Gaetano d/b/a Gen Cable Co.

10. Paragraph 6 of the February 12, 1986 Order on Consent (Index T012885) stated:

Nothing herein shall be construed as affecting the Department's right to commence any action or proceeding to which it may be entitled in connection with, relating to, or arising out of Respondent Gaetano's storage and/or disposal of hazardous or industrial wastes at the site.

11. Pursuant to ECL § 27-0914(2): "No person shall possess hazardous wastes without authorization."

12. Pursuant to ECL § 27-1313(5):

The Commissioner shall make every effort, in accordance with the requirements for notice, hearing and review provided for in this title to secure appropriate relief from the owner or operator of such site and/or any person responsible for the disposal of hazardous wastes at such site, including, but not limited to, development and implementation of an inactive hazardous waste disposal site remedial program, payment of the cost of such program, recovery of any reasonable expenses incurred by the State, money damages and penalties.

13. Pursuant to ECL § 72-0201:

Notwithstanding any general or special law to the contrary, all persons who require a permit or approval pursuant to a state environmental program, or who are subject to regulation under a state environmental

regulatory program shall submit a fee as authorized under this article annually to the Department, on such forms, and at such times as specified by the Department.

14. To promote the best interests of the parties, Respondent, without any admission of law or fact, has affirmatively waived its right to a hearing on this matter as provided by law and consents to the issuing and entering of this Order, and agrees to be bound by the terms, provisions and conditions contained herein.

NOW THEREFORE, it is ordered that:

I. Respondent shall pay a settlement sum of \$49,009 as follows:

(1) \$13,000 shall be paid within fifteen (15) days after the effective date of this Order. This sum shall be payable to the New York State Department of Environmental Conservation and be in full satisfaction of any hazardous waste program fees due for the storage and generation of hazardous waste as alleged in Paragraph 4 of this Order pursuant to § 72-0101 and § 72-0402 of the Environmental Conservation Law. Payment shall be sent to:

New York State Department of  
Environmental Conservation  
Regulatory Fee Unit, Room 109  
50 Wolf Road  
Albany, New York 12233  
Attention: Barbara Barrell

(2) The remaining sum of \$36,009 shall be paid in seventeen monthly installments of \$2,000 and a final payment of

\$2,009. The first payment shall be due thirty (30) days after the Respondent's payment of the sum of Paragraph I(1) of this Order. This sum shall be payable to the New York State Hazardous Waste Remedial Fund. Payment shall be sent to:

New York State Department of  
Environmental Conservation  
Division of Environmental Enforcement  
50 Wolf Road, Room 105  
Albany, New York 12233-0001  
Attention: Joseph Forti

or such other address as the Department may advise the Respondent in writing.

II. Within ten (10) days of the effective date of this Order, Respondent shall have the PCB Transformers and PCB oil described in paragraph 9 of this Order transported for off-site disposal and arrange for the disposal of these materials in accordance with applicable law.

III. The Respondent's acceptance of the provisions, terms and conditions of this Consent Order is in full and complete satisfaction and release of each and every claim the Department has against the Respondent, Charles A. Gaetano d/b/a Gen Cable Co., their agents, servants and employees, for the matters set forth at Paragraphs 4 and 9 of this Consent Order, including, but not limited to, claims for penalties, regulatory fees and the Department's administrative expenses.

IV. This Order shall become effective when it is signed by the Commissioner.

Dated: Albany, New York

*January 22*, 1986

HENRY G. WILLIAMS  
Commissioner  
NYS Department of Environmental  
Conservation

*Henry G. Williams*



CONSENT BY RESPONDENT

Respondent, without any admission of law or fact, hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

GAETANO ASSOCIATES

BY: Charles A. Gaetano

TITLE: General Partner

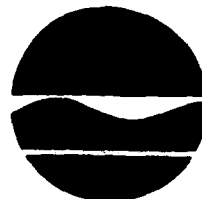
DATE: Jan 2, 1988

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF ONEIDA     )

On this 2<sup>nd</sup> day of January, 1988<sup>7</sup>, before me personally came Charles A. Gaetano, to me known, and known to me to be a general partner of GAETANO ASSOCIATES, the partnership described in and which executed the foregoing instrument, and acknowledged to me that he signed his name thereto as the act and deed of GAETANO ASSOCIATES.

John N. Kinley  
Notary Public

New York State Department of Environmental Conservation  
50 Wolf Road, Albany, New York 12233-0001



Henry G. Williams  
Commissioner

January 28, 1985

Barry Kogut, Esq.  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, New York 13202

Re: Gaetano Associates -  
Order on Consent

Dear Mr. Kogut:

Enclosed please find the proposed final version of the Order on Consent with respect to Gaetano Associates. This Order reflects those changes which we discussed in our telephone conversation of January 25.

Attached to the Order is a clean copy of the Summary Abatement Order issued by Commissioner Williams on January 7. I propose that you append the Summary Abatement Order together with Exhibit B and Exhibit C, as revised pursuant to our discussion of January 25.

Please note the revised index number on the Consent Order, so that the exhibits' document may be properly marked.

Should you have any questions regarding this matter, please call me.

Sincerely,

David A. Engel  
Assistant Counsel  
Division of Environmental  
Enforcement

DAE/jmp  
Enclosures

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of a Remedial  
Program to Eliminate an Imminent Danger  
to Human Health and Welfare and Natural  
Resources Caused by the Unpermitted  
Storage of Hazardous Wastes by

ORDER  
ON  
CONSENT

Index#T012885

GAETANO ASSOCIATES,

Respondent

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RECITALS

R-1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27 of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Collection, Treatment and Disposal of Refuse and Other Solid Waste", and regulations promulgated pursuant thereto in Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

R-2. Respondent Gaetano Associates ("Gaetano") is a limited partnership organized and existing under the laws of the State of New York.

R-3. Respondent Gaetano presently transacts business under the assumed business name of "Charlestown Factory Outlet Center" at a parcel consisting of approximately twelve buildings located

on approximately ten acres situated partially within the City of Utica, County of Oneida, and partially within the Town of Frankfort, County of Herkimer, New York (the "Site").

R-4. On January 7, 1985, the Commissioner of Environmental Conservation issued a Summary Abatement Order which directed that Gaetano arrange for the disposal of hazardous wastes located at the site. The "Summary Abatement Order" and the affidavits appended thereto are attached hereto and made a part hereof as "Exhibit A". On January 8, 1985, at approximately 10:30 a.m., said Summary Abatement Order was served by personal service on Charles Gaetano at the Site.

R-5. Due to the number of drums and other containers containing wastes and the apparent diversity of the types of wastes at the Site, Respondent Gaetano requested that certain of the time limits in the Summary Abatement Order be revised. Following review by the Department, the Summary Abatement Order was modified as follows:

(a) The "preliminary inspection of all containers" described in paragraph I(A) was to be completed no later than January 14, 1985 at 5 p.m.

(b) The actions and responsibilities described in paragraphs II(A), (B), (C), (D) and (E) were to be completed no later than January 14, 1985 at 5 p.m.

(c) The sealing of windows to prevent entry and the installation of locks and the actions regarding keys described at paragraph I(B)(1) and (2) were to be completed no later than January 9, 1985 at 5 p.m.

(d) The warning notices referenced at paragraph I(B)(4) were to be posted at the entrances to all buildings on the Site containing hazardous wastes no later than January 10, 1985 at 5 p.m. The signs were to contain the words "KEEP OUT - NO TRESPASSING - HAZARDOUS WASTE."

(e) A detailed plan for identification and removal of the wastes described in paragraph III(B) of the Summary Abatement Order was to be filed with the Department by January 15, 1985.

R-6. Respondent Gaetano has complied with the requirements of the Summary Abatement Order which are described in paragraph R-5.

R-7. Allwash of Syracuse, Incorporated has been retained on behalf of the Respondent Gaetano to remove any hazardous wastes at the Site. The Department has approved the selection of Allwash as the Respondent Gaetano's contractor in accordance with paragraph VI of the Summary Abatement Order.

R-8. Paragraph VIII of the Summary Abatement provides Respondent Gaetano with an opportunity for a hearing herein as provided by law. Respondent Gaetano, without making any

admission of law or fact, hereby waives its right and opportunity for such hearing and consents to the issuance and entry of this Order and agrees to be bound by the provisions, terms and conditions hereof.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondent Gaetano shall perform those actions and responsibilities as enumerated and described in the Summary Abatement Order in paragraphs III(A), IV and V except as specifically modified herein:

(a) In lieu of the "performance bond" described in paragraph III(A), Respondent Gaetano shall provide to the Department an irrevocable letter of credit in the form attached as Exhibit B within three (3) business days after the effective date of this Order on Consent.

(b) Respondent Gaetano shall manifest, transport and dispose of all drums present on the Site that are not empty, including the contents of all plating and etching tanks by February 28, 1985, rather than the time schedule referenced at paragraph IV of the Summary Abatement Order. Respondent Gaetano shall follow the testing program described in Exhibit C of this Order in arranging for said disposal.

2. The Department shall have the right to obtain for the purpose of comparative analysis "split samples" or "duplicate

samples", at the Department's option, of all substances and materials sampled by Respondent Gaetano pursuant to this Order. As used herein: "split samples" shall mean whole samples divided into aliquot; "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical containers prepared identically, filled to the same volume, and thereafter identically handled and preserved.

3. Respondent Gaetano shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent Gaetano, and any areas necessary to gain access thereto, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondent Gaetano's compliance with the provisions of this Order.

4. The Department agrees that the terms of this Order shall not affect the liability of any other persons responsible for the conditions present at the Site. All rights which Respondent Gaetano may have to proceed against any other responsible party are expressly reserved.

5. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

(a) any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent Gaetano, its officers, employees, servants, agents, successors and assigns;

(b) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respondent Gaetano, its officers, employees, servants, agents, successors and assigns in the event that Respondent Gaetano shall fail to fulfill any of the provisions hereof; and

(c) the Department's right to bring any action, at law or in equity against Respondent Gaetano, its officers, employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes from the Site or from areas in the vicinity of the Site.

6. Nothing herein shall be construed as affecting the Department's right to commence any action or proceeding to which it may be entitled in connection with, relating to, or arising out of Respondent Gaetano's storage and/or disposal of hazardous or industrial wastes at the Site.



7. Respondent Gaetano shall indemnify and hold the Department, the State of New York, and their duly authorized representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description ("loss") arising out of or resulting from Respondent Gaetano's fulfillment or attempted fulfillment of the terms of this Order to the extent the negligent acts or omissions or willful misconduct of Respondent Gaetano, its officers, directors, employees, contractors or agents caused the loss.

8. If, for any reason, Respondent Gaetano desires that any provision of this Order be changed, it shall make timely written application therefor to the Commissioner, setting forth reasonable grounds for the relief sought.

9. No informal advice or guidance by the Department's officers or employees or representatives upon any plan, report, proposal, study or other document, or modifications or additions thereto, submitted by Respondent Gaetano to the Department, shall relieve Respondent Gaetano of any obligation it may have to obtain the Department's formal written approval of the same.

10. The terms and conditions of this Order on Consent shall be delayed or modified if Respondent Gaetano cannot comply because of an act of God, war, strike, riot, or other condition

as to which negligence or willful misconduct on the part of Respondent Gaetano was not a proximate cause; provided, however, that Respondent Gaetano shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the provisions hereof.

11. The failure of Respondent Gaetano to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this order and under the ECL.

12. The provisions of this Order shall be deemed to bind Respondent, its officers, employees, servants, agents, successors and assigns.

13. The effective date of this Order shall be the date this Order is signed by the Commissioner or his designee.

DATED: Albany, New York  
                    , 1985

HENRY G. WILLIAMS  
Commissioner  
New York State Department of  
Environmental Conservation

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CONSENT BY RESPONDENT

Respondent Gaetano Associates, without making any admission of law or fact, hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

GAETANO ASSOCIATES

By: s/Charles A. Gaetano  
General Partner

STATE OF NEW YORK )  
COUNTY OF Oneida ) S.S.:

On this 6th day of February, 1985, before me personally came Charles A. Gaetano, to me known, and known to me to be a general partner of GAETANO ASSOCIATES, the partnership described in and which executed the foregoing instrument, and acknowledged to me that he/she signed his/her name thereto as the act and deed of GAETANO ASSOCIATES.

Barry R. Kogut  
Notary Public

BARRY R. KOGUT  
Notary Public in the State of New York  
Qualified in Onondaga Co. No. 4672223  
Commission Expires March 30, 1986

# ELECTRONIC RECORD TARGET SHEET

<b>SITE NAME:</b>	CHARLESTOWN MALL SITE
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<b>CERCLIS ID:</b>	NYC200400513
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<b>SDMS DOC ID:</b>	284617
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<b>ALT. MEDIA TYPE:</b>	N/A
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<b>DOCUMENT FORMAT:</b>	PDF
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<b>NATIVE FORMAT LOCATION/FILENAME:</b>	N/A
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<b>COMMENTS:</b>	EXHIBIT 9 HAVE BEEN REMOVED BECAUSE IT CONTAINS CBI.
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# Exhibit 10

(iii) None of the Target, its Subsidiaries, and the other members of the Controlled Group of Corporations that includes the Target and its Subsidiaries contributes to, ever has contributed to, or ever has been required to contribute to any Multiemployer Plan or has any Liability (including withdrawal Liability) under any Multiemployer Plan.

(iv) None of the Target and its Subsidiaries maintains or ever has maintained or contributes, ever has contributed, or ever has been required to contribute to any Employee Welfare Benefit Plan providing medical, health, or life insurance or other welfare-type benefits for current or future retired or terminated employees, their spouses, or their dependants (other than in accordance with Code Sec. 4980B).

(e) *Guaranties.* None of the Target and its Subsidiaries is a guarantor or otherwise is liable for any Liability or obligation (including indebtedness) of any other Person.

(f) *Environment, Health, and Safety.*

(i) Each of the Target, its Subsidiaries, and their respective predecessors and Affiliates has complied with all Environmental, Health, and Safety Laws, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure so to comply. Without limiting the generality of the proceeding sentence, each of the Target, its Subsidiaries, and their respective predecessors and Affiliates has obtained and been in compliance with all of the terms and conditions of all permits, licenses, and other authorizations which are required under, and has complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables which are contained in, all Environmental, Health, and Safety Laws.

(ii) None of the Target and its Subsidiaries has any Liability (and none of the Target, its Subsidiaries, and their respective predecessors and Affiliates has handled or disposed of any substance, arranged for the disposal of any substance, exposed any employee or other individual to any substance or condition, or owned or operated any property or facility in any matter that could form the Basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of the Target and its Subsidiaries giving rise to any Liability) for damage to any site, location, or body of water (surface or subsurface), for any illness of or personal injury to any employee or other individual, or for any reason under any Environmental, Health, and Safety Law.

(iii) All properties and equipment used in the business of the Target, its Subsidiaries, and their respective predecessors and Affiliates have been free of asbestos, PCB's, methylene chloride, trichloroethylene, 1,2-transdichloroethylene, dioxins, dibenzofurans, and Extremely Hazardous Substances.

(g) *Certain Business Relationships with the Target and Its Subsidiaries.* None of the Sellers and their Affiliates has been involved in any business arrangement or relationship with the Target and its Subsidiaries within the past 12 months, and none of the Sellers and their Affiliates owns any asset, tangible or intangible, which is used in the business of any of the Target and its Subsidiaries.

(h) *Disclosure.* The representations and warranties contained herein do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements and information contained herein not misleading.

9. *Pre-Closing Covenants.* The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing.

(a) *General.* Each of the Parties will use his or its best efforts to take all action and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the closing conditions set forth in below).

# **Exhibit 11**

AGREEMENT made this 3rd day of December, 2014, between Charlestown Mall of Utica, LLC, herein after "Owner" and Eckardt C. Beck ("Optionee").

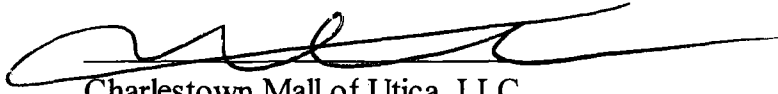
WHEREAS the Owner is the owner of real property situated in the City of Utica, NY and Town of Frankfort NY commonly known as "Charlestown", being a parcel "improved" with a number of mostly early 20th century industrial buildings in an advanced state of deterioration, encumbered by a large number of significant environmental conditions, requiring the removal and/or remediation of these hazardous conditions ("the site"), and

WHEREAS the Optionee has been professionally involved in environmental risk management and remediation for decades, including having been the Administrator of EPA Region II, and is willing, ready, and able to advance the process of remediating the site,

NOW, THEREFORE, the parties agree as follows:

1. The Owner hereby grants the Optionee, or his assigns, an irrevocable option to take title to the site for a period of two years from the date hereof.
2. The purchase price, should the Optionee exercise the option, shall be One Dollar (\$1.00).
3. If the Option is exercised, the Owner shall give the Optionee a quit claim deed to the premises, without reservation.
4. This is the complete agreement of the parties, and this agreement may be amended, renewed, altered, or terminated only by further written agreement of the parties.

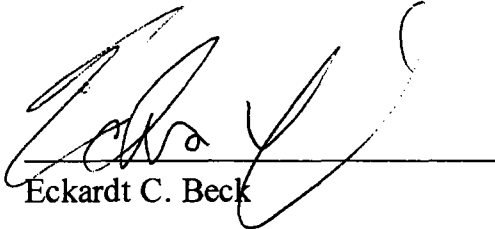




Charlestown Mall of Utica, LLC

(Owner)

by Michael Cancilla, Esq., Manager



Eckardt C. Beck